# FILE OF CORRESPONDENCE

REGARDING

# THE RELATION OF LANDLORD AND TENANT

IN

## MALABAR,

1852–56.

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NOTE.—The matter seems, after this, to have been allowed to drop.

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# FILE OF CORRESPONDENCE

REGARDING

# THE RELATIONS OF LANDLORD AND TENANT IN MALABAR, 1852–1856.

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## No. 1.

Extract from the Minutes of Consultation under date the 17th February 1852, appointing Mr. Strange Special Commissioner to inquire into the Moplah Outrages.

*     *     *

10. Referring to the many instances in which disputes respecting land have been, or have been assigned as the causes of *émeutes*, and to the position of the Hindu and Moplah in their relations of landlord and tenant, mortgagor and mortgagee, he will consider whether any measures seem called for for defining the landed tenures of the country and placing them on a better basis.

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## No. 2.

Mr. Strange's Question addressed to the Collector Mr. Conolly.

The question is, can anything be done to prevent collision between Hindu landlord and Moplah tenant when measures for ejectment are contemplated, as also to induce the landlords not to act arbitrarily or harshly in dealing with their tenants and to get the tenants to be fair and honest on their side in coming to settlement with their landlords. Might the Courts be prohibited from receiving suits for ejectments until the Collector has referred them to them, giving the Collector thus the opportunity of bringing about an accommodation between the parties so as to stave off the process of going to the Courts? The Collector could not look into all such cases, but might have a discretion left him as to the extent to which he might carry his interposition, nor need he personally investigate the differences between the parties. He might refer the matter to his chief officers or the principal inhabitants, taking care to close the proceedings by having the parties before him and satisfying himself that the arrangements entered into were fair and well assented to.

### The Collector's Reply.

1. The difficulty of settling cases relative to rent between landlord and tenant is as great in Malabar as in any other country where there is private property. In many instances it is greater than it is in most countries from the fact of the opposing parties being of a different creed and caste and entertaining a mutual and hereditary antipathy. In this respect Malabar in various of its taluks very much resembles Ireland, the Hindu landholder and Moplah tenant representing with considerable accuracy the Protestant and Roman Catholic filling the same grades in that island. In both countries the landlord wishes (naturally enough) to get the full value for his

ground; the tenant prefers to hold it on easy terms, and in many instances evades payment, or full payment, so long as he can. Eviction follows under the regular course of law, and eviction tends to ill-feelings sometimes shown by murder.

2. But in Malabar there should be the less cause for revenge as contrasted with Ireland, that by the ancient rules of the country no man should be evicted from a substantial holding without obtaining a reimbursement for any *bonâ fide* expense which he may have laid out on it during its occupancy. The tenant right so much spoken about and wished for in Ireland and England has in principle been in the possession of the tenants of Malabar from time immemorial. Were the ancient rules which regulate those rates revised and increased with reference to the increased value of property, any solid and thorough grievance from ejectment would not (as a general rule) be felt in Malabar.

Kuḻikkânam for gardens.
Veṭṭukkânam for lands.

3. It would always be some annoyance for a man to leave a property which is endeared to him from associations. A man might be turned out of his property by false accusations supported by false deeds, and the amount adjudged to him by assessors in his ejection as improvement or tenant right *might* from evil influence be fixed lower than local usage and the law should have made it.

4. But notwithstanding these (of course exceptional) cases there can be little doubt that, were the peculiar laws of the country fully carried out, the tenant of Malabar would be in as good a position, to say the least, as the tenant in any other part of the world.

5. According to the ancient customs of Malabar, land as a general rule is not leased at its full value. But the apparent lightness of lease is balanced by the custom of insisting on fines and presents of different natures at different intervals; fines are paid on investiture, on renewals, and on various other occasions. It is a common complaint of the tenant that allowance is not made for these fines in the lease bonds, and that a greedy landlord, in order to obtain fresh fines from a new tenant, frequently departs from the spirit and intention of the old laws and ousts the prior occupant before he has had time to recover this outlay.

NOTE.—Even now I greatly doubt whether in the majority of instances in the Moplah districts the rights of the landlords are not in more jeopardy than those of the tenant.

I think that, as I mentioned in the Appendix No. 2 to my letter to Government of the 12th October 1849, the fear of the Hindu in these Moplah taluks acts as a great check against much abuse, and that as a general rule he does not press for his *rights* with the same energy here as he would in a more quiet part of the country.

6. It would be a great point in order to avoid what all must allow to be a breach of faith and departure from the spirit of the Kánam janmam maryádi were it possible to change the feeling and practice of the janmis on this point and to make them acknowledge in writing *everything* they received from their tenants or mortgagees. A law similar to that contained in Section 7 of Regulation XXX of 1802 would meet this object, but I do not imagine the law could be passed without the consent of the janmis. This, at the solicitation of the Commissioner, they might be inclined to agree to.

7. Of the advantage of settling suits of any nature by arbitration in place of law (if possible) there can be no question, but whether any law could be passed forcing people to abide by such an amicable tribunal is, I think, doubtful. Such a law would, as it seems to me, strike at the principle of all private property. It has been argued that much may be done to lighten litigations by enforcing the provisions of Regulation V of 1822. I have always felt great difficulties on this subject and thought (with all my predecessors) that the Regulation would not work well here. Few of these cases are questions of simple lease; there is generally some sort of fine or mortgage claim involved, requiring therefore a careful judicial examination.

NOTE.—I pass by here the question as to the *justice* of that Regulation being introduced into a country where private rights in land have existed from time immemorial and where the tenures are complicated and quite peculiar. The Regulation (considered by eminent men at the time to be a very blundering one) was intended as the mere sequel to Regulations XXVIII and XXX of 1802, which were expressly framed for the purpose of insuring the Government revenue, and which, it was distinctly stated in Regulation IV of 1822, were not to authorize the infringement or limitation of any established rights.

It was in reference to this I presume that in the 26th paragraph of the letter to Government of the Sadr Court of the 20th December 1824 (quoted in Mr. Campbell's edition of the Regulations) the Judges held that "summary interference" on behalf of the landholder should be restricted to the cases in which such interference was necessary for the "punctual collection of the revenue" under the circumstances described in Section 34, Regulation XXVIII of 1802, and that they are clearly of opinion that suits for the recovery of rents should be disposed of exclusively by the regular judicial tribunal.

In making these remarks I do not lose sight of the fact that the legality of Regulations XXVIII and XV as referring to Malabar was decided *with reference to a particular point* by the Sadr in 1829.

The question of their applicability *generally* has not, I believe, been discussed. Look at the very important Section 7, Regulation XXX, forbidding the levy of any cesses not shown in the lease bond, how could that be carried out *arbitrarily* in Malabar without overturning the system so universally prevalent of taking fines on institution, &c. (see above, paragraph 5).

8. The people would not generally be satisfied with a summary and offhand order; they would insist on reference to bonds and witnesses which must take up considerable time. The Punchayat system would not do as a general rule. The people are not over-inclined to that course of procedure themselves, and most of the principal inhabitants have so much to do with their own business as to feel unwilling to look after that of others without payment. When called in by parties themselves they generally *are* paid for their judgment.

NOTE.—There is a large amount of work connected with the revenue and accounts of the district which must *primarily* engage the attention of the chief servants in the Huzzur office. The Sheristadars have to work hard to keep down arrears.

9. The influx of business in the Collector's office therefore would be so great that, *if got through* in any reasonable time, a large portion of it must be transacted by the hands of inferior servants—an evil the results of which are patent to any one acquainted with the native character.

It is well to mention that my Second Sheristadar and Head Assistant are in favor of the Regulation V of 1822. Mr. Collett and my Head Sheristadar are adverse to it. The latter informs me that Mr. Hudleston had resolved on its introduction in 1832, but was induced to change his purpose at the instance of Karunágara Ménon, the late pensioned Sheristadar, a man of much experience and eminence in Malabar.

There is no *record* on this point.

10. It seems to me, in view of all these circumstances, very questionable whether it would be advisable to entertain the idea of effecting a real reform by the use of this Regulation, even were all difficulties with regard to the justice of its working at an end.

*Particular* selection should be made for the suspicious taluks as a matter of course. The present Munsif (a Nâyar) of Ernád is, I believe, a very good man; were he to vacate his appointment, I would suggest the employment of an *East Indian* Munsif in his place.

NOTE.—An East Indian *has* been subsequently appointed.

The notice might be given at any time early in the suit or before its commencement if thought advisable by the local judicial officer.

11. Were the old laws of the country duly enforced and expanded, the present machinery (which, if needful, might be increased in amount) would, I think, be as good as any. An improvement might be gained by putting the Judicial Courts more *en rapport* with the Revenue and Police authorities and by directing that, whenever the judicial officer (generally the Munsif) had any reason to apprehend that the result of any trial before him between Hindu and Moplah was likely to lead to dangerous exasperations, he should give such quiet notice of it to the Revenue European authority as will enable *him* to interfere personally and take such steps as were likely to avert the evil.

12. I have already gone on this idea by getting the Session Judge to desire the Munsif of Ernád in cases where an order for eviction of a Moplah tenant has been issued to bring the matter to the notice of Mr. Collett prior to executing the decree. Mr. Collett would then send for the parties and see if any arrangement could be made, and in cases where he thought it necessary send on the parties to me at Calicut ere final orders are passed.

13. These redoubled efforts to arrange matters peaceably cannot, it is hoped, but be attended with good effect, and at the worst, if no amicable arrangement can be come to and a hostile collision is feared, the *Magistrate* as a last resource can step in and bind the dangerous party over to keep the peace.

(Signed) H. V. CONOLLY,
*Collector and Magistrate.*

CALICUT,
30*th March* 1852.

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No. 3.

From T. L. STRANGE, Esq., Special Commissioner, to T. PYCROFT, Esq., Secretary to Government, Judicial Department, Fort St. George, dated Tellicherry, 25th September 1852.

* * *

19. Of those who have broken out in South Malabar, and of all who have designed to do so, there are, it thus appears, but fourteen for whom any personal

cause of provocation is discoverable. In seven instances land has afforded the presumed ground of quarrel. In three, namely, Nos. IV, XIII, and XV, parties were ejected six, sixteen, and fifteen years before these outbreaks. In two, namely, Nos. V and VI, the real ejectors were Moplah relatives of the parties to be turned out. In one, No. XIII, nothing more had been done than to propose an exchange in respect of which a surviving relative of the criminal herein concerned has said that no injury would have been entailed. And in the remaining case, No. VII, an encroachment had been complained of. The provocatives of the other seven criminals were mostly of an equally unreal nature. These were connected with quarrel or assault. In No. III a petty altercation had occurred which had been adjusted; in No. XIII there was an assault, but of doubtful occurrence; and in No. XV a dispute relating to a bond of two rupees value which had taken place ten years before the outbreak. Furthermore in No. IX a party under suspicion had been sent by an authorized person to the Taluk Cutcherry; in No. XVII a very petty over-assessment was said to have been made, but the fact was found to be not so; and in No. XV there had been two complaints of theft, one of three years' anterior date. As to the rest, nine, namely, one in No. II, five in No. XXV, and three in No. XXXI, appear to have been instigated to engage in crime by others who were to profit thereby, or had malice to satisfy; five, namely, three in No. VI and two in No. XVI, seem to have been induced to do so because of relatives having wrongs, fancied or real, to redress; and the remaining one hundred and forty-four were without any personal provocation whatsoever. In the northern case, No. XXIV, wherein fifteen criminals were concerned, suits and police complaints more or less affecting them had arisen, but several of these were of an old date, and none presented such urgent grounds of provocation as to have produced the outbreak, and the real cause thereof was indubitably instigation by others for selfish ends.

20. It is apparent thus that in no instance can any outbreak or threat of outbreak that has arisen be attributed to the oppression of tenants by landlords. A great clamour is now raised on this regard, prominently in the southern taluks visited by me, the Moplah population seeking to throw the blame of these outbreaks upon the landlords by thus charging them with being the cause thereof. I have given the subject every attention and am convinced that, though instances may and do arise of individual hardship to a tenant, the general character of the dealings of the Hindu landlords towards their tenantry, whether Moplah or Hindu, is mild, equitable, and forbearing. I am further convinced that where stringent proceedings are taken the conduct of the tenants is in the vast majority of cases the cause thereof, and that the Moplah tenantry, especially of the taluks in South Malabar, where the outbreaks have been so common, are very prone to evade their obligations and to resort to false and litigious pleas.

21. The following table exhibits a yearly average taken from returns for all Malabar for the last ten years of suits brought for ejectment from land, and will show the state of litigation on this head as between Hindus and Mahomedans :—

| — | Suits laid. | Ejectments decreed. | Ejectments refused. | Razeed or struck off. | — |
|---|---|---|---|---|---|
| By Hindus against Mahomedans. | 232 | 81 | 5 | 127 | Suits pending are excluded from this account, as also suits brought against Hindus and Mahomedans jointly. |
| By Hindus against Hindus .. | 680 | 207 | 45 | 325 | |
| By Mahomedans against Hindus. | 73 | 24 | 5 | 32 | |
| By Mahomedans against Mahomedans. | 155 | 43 | 10 | 79 | |

22. The population is of about 15 lakhs, the proportion of Hindus to Mahomedans very nearly as 3 to 1. It will be seen that there has not been an undue amount of suits of the description in question brought against Mahomedans by Hindus; that Hindus have in an equal ratio thus sued those of their own caste; that Mahomedans have done the like by Mahomedans; that the great majority of these suits, and especially as laid by Hindus against Mahomedans, which have been brought to

decision, have been adjudged as equitably preferred; and that there has been the disposition largely manifested to settle these prosecutions amicably.

23. The exactions complained of as made by Hindu landlords are simply such as have existed from times immemorial and as are levied from Hindu tenants equally as from Mahomedans. The chief item is the fine required at renewal of leases. This is at the rate of from 10 to 20 per cent. on the sum sunk by the tenant in mortgage, and most of the land in Malabar is leased out on mortgage. The fine is raised on the strength of profits remaining to the cultivator after provision for all expenses of cultivation and charges upon the land. The renewals should not be oftener than once in twelve years, and the complaint is that they are resorted to at much shorter intervals. From the inquiries I have made I do not believe that grounds exist for this complaint to any serious extent, and especially of late years in the taluks where the outbreaks have so largely prevailed, for there the Hindu landlords are in such terror of the Moplah population that few are able to exact their legitimate dues, and certainly none are in a condition to press for more. On the other hand, the instances are numerous wherein leases are allowed to run on unrenewed for a much longer time than what I have above specified as the limit which local rule would prescribe for them. The other exactions are fees of various descriptions, but of a petty nature, taken more or less on the granting of deeds, such as for the signature, for the writer of the deed, for the witnesses, and for oil for the pagodas and certain contributions of fruit and palm and plantain leaves designed originally to express the goodwill of the tenant towards the landlord. All these are sanctioned by custom. A further source of complaint is the ousting a tenant on obtaining a higher sum on mortgage from another to whom the land is thereon granted. It is permitted to a landlord when exigency arises to raise more money upon his land. In fact he has no other resources upon which to draw for his emergencies. He should however first give the existing tenant the opportunity of providing this money, so that the land may remain undisturbedly in his possession. This process has however to some extent doubtless been abused. To get rid of an obnoxious tenant some small and nominal addition to the mortgage money has been taken from another and the tenant thereupon ousted. I have had no means of ascertaining to what extent this abuse has prevailed, but Hindus have admitted its existence. I do not know that it has fallen especially upon Mahomedan tenants, and have reason to believe that, when it has so, it has been usual to substitute one Moplah for another. No such circumstance however, it is clear, has impelled any one of the actors in these outbreaks to break out.

24. The other cause for these affairs alleged by the Moplah population, namely, that destitution has occasioned them, appears to me as inadmissible as the one I have above discussed, namely, the oppressive conduct of the landlords. The criminals, with few exceptions, have been young in years, and occasionally were mere boys. Early youth is certainly not the time of life for despondency. The spirits are then buoyant, the energies unimpaired, and the body well fitted for that labor which will ordinarily ensure a maintenance, and it cannot be believed that it would be those just entering on life who should be ready thus to throw it away from mere despair as to the means of supporting it.

25. A feature that has been manifestly common to the whole of these affairs is that they have been one and all marked by the most decided fanaticism, and this there can be no doubt has furnished the true incentive to them. The victims, or designed victims, have been all Hindus, and their slayers or intended slayers all Moplahs. And those who have carried out their purposes have done so with the avowed desire of seeking death in arms against "Kafirs" with the view of obtaining the joys of their fancied paradise, and most religiously have they kept to their resolution. Not one when fairly embarked in the cause has ever wavered or turned from it, and such has been the attractive fate they were courting that on several occasions persons unengaged in the original plot have taken part with their brethren in arms with the sole view of dying with them. In the great Manjeri case, No. XV, full forty-nine joined under such circumstances. In the murder of the Kaprat Pannikar in No. X, in that of the Kolatur Warriar in No. XX, and in the design to kill the peon in No. XXX, the redress of imputed offence against religion was the sole influencing motive. The burning and desecration of pagodas resorted to on so many occasions betrays the like spirit of fanatic hostility, and in five instances Hindus had

their top-knots cut off, this being the badge of their caste; and some of these were required to recite the Mahomedan declaration of faith, and their lives, there can be little doubt, were spared on their undertaking to adopt that faith. The attempt made on that of the Brahmin in No. XXXI appears to have been owing to his refusal to conform thereto.

26. The inquiry thus is narrowed to the consideration of how this fanaticism has sprung up.

* * *

38. The close unity of the Moplahs in all interests of their caste and the jealousy and hatred of a Hindu which is common to them have led to the greatest sympathy in these outrages being evinced. Under their operations the power of the caste and the prostration of those of the adverse persuasion have been much advanced, and out of this substantial benefits to the aggressive body have arisen. The Hindus in the parts where outbreaks have been most frequent stand in such fear of the Moplahs as mostly not to dare to press for their rights against them, and there is many a Moplah tenant who does not pay his rent and cannot, so imminent are the risks, be evicted. Other injuries are also put up with uncomplained of. The administration of the country is carried on under the constant apprehension of these outbreaks, and the Moplahs have been treated with a misplaced consideration which under the circumstances of the country has served much to uplift them. They have been called to office likewise in respect of these outbreaks in a way to magnify their importance as a caste and to make them gainers by the very crime which has been current among them. The laws unhappily have been able to afford no remedy. One Moplah will not betray another in matters wherein the honor and advantage of the caste is concerned. The actual perpetrators have suffered in the engagements they have courted, and their end, in lieu of entailing shame, has brought them glory. Two only have ever been captured so as to be brought to justice, and the plotters and abettors in these scenes have to the south universally escaped. Under all these circumstances the evil has become deep-rooted in the country, and being based, not on simple delusion merely, but upon actual criminality and prospect of gain, it will not of itself expire. It has been visibly extending itself from the south to the hitherto unaffected northern taluks, and the departure of the Tangal has not served to give it a death-blow as the actual outbreak No. XXXI and the threatened one No. XXX, cases which have occurred since he left the country, fully prove.

* * *

68. With respect to contests as to land between the Hindus and the Moplahs which have been assigned as causes of outbreaks and the position of these castes in relation to each other as landlord and tenant, the Government have called upon me to consider whether any measures seem requisite for defining the landed tenures of the country and placing them on a better basis.

69. The judicial situations I have held in Malabar have necessarily made me conversant with these tenures. They are intricate, but far from irrational. On the contrary they are conceived in much wisdom, forethought, and fairness, their principle being to allow the landlord to raise money on his land under various descriptions of deeds according to his exigencies up to the full value of the land, yet without parting with his title absolutely or losing the privilege of redeeming his property when able to do so, and at the same time to guard the interests of the tenant by the grant to him of extended leases and of indemnification for improvements he may have made upon the soil. Under our Courts due attention has not been always paid to the rules by which these tenures are governed, and the benefit of them has been so far forfeited. The Moplahs, as I have noticed, complain of the Hindu landlords ejecting them at shorter intervals than what is prescribed by the ancient usuage of the country, and this is an evil which to some extent prevails. It is obviously highly essential that the tenant should not be disturbed from possession arbitrarily and at unduly short periods, and the recognized rule is that, if he should have paid a fine for his lease, it should endure for twelve years under certain reservations as when the landlord, if a Raja, dies, when he should renew with his successor, or when the landlord requires more money on the land and the tenant will not provide it and it is obtainable from another, or when rents are not paid. The Hindus again, as I have also noticed, suffer by the idea which has been introduced that a joint share in property involves a number of individual shares any of which may be divided off from the estate and forfeited to a creditor of the assumed individual shareholder, whereas the theory of a Hindu family in Malabar is that the head thereof has entire control therein, that his signature alone can be taken for any exigencies of the family for the due support of the whole of whom he is responsible, and that the property is vested in him for the common good of all and is indivisible. These questions, it appears to me, might be brought under the attention of the Sadr Adâlat, and a declaration of the rule therein, after such consideration thereto as the Court might have to give to these subjects, might emanate from them for the future guidance of the authorities in Malabar. In other respects I do not see that any interposition with regard to defining rights on land in Malabar is called for.

69 (*a*). It would however be of the highest advantage towards lessening the discords in the country and preventing that perversion of justice which indubitably largely prevails in the district if such a system of registration were adopted as would assure to landholders, whether proprietors or mortgagees, the integrity of their tenures and prevent their rights being nullified by fictitious titles asserted against them. The amount of deeds in the hands of those connected with land is enormous, and it may be safely said that there is not a single family of any antiquity having land which has not been involved in litigation about it. Forgery and perjury are crimes which so very rarely meet with punishment owing to the difficulty of establishing guilt under the requisitions of the existing laws and practice, that the fear of consequences scarcely exists to deter parties from committing them, and the country is notoriously teeming with false deeds and false witnesses placing the interests of landholders in perpetual risk. These assuredly require protection at our hands and the simple acumen and industry of the Courts does not afford it. Corruption moreover but too often invades these tribunals in the native branches thereof. Under any circumstances the most favorable time for recording evidence is obviously the nearest to that in which the subject of the evidence may have had occurrence, whereas, under our present system of inquiry, such evidence has to be sought for at remote periods from the dates of the transactions to be investigated, when the true sources of information become either extinguished or open to suspicion and have to be judged of under the disadvantage of a host of adverse evidence arrayed upon the opposite side. The remedy for all this plainly lies in registration. The parties should have to put their transactions on record as they occurred, and in most instances the Courts at future seasons, when resorted to to give effect to these transactions, would have no

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more to do than to refer to the registry and issue process accordingly. A flood of litigation with all its evil consequences of fraud, spoliation, and bad blood engendered between parties would be spared to the country and a very healing measure would be applied to the dissensions which now rend it. But to be effectual the registration appointed must be peremptorily so under the penalty that the Courts will entertain no deeds associated with rights on land which are not registered. The proposed Act for registration read before the Legislative Council on the 20th February last, and appearing in the *Fort St. George Gazette* of the 6th August, is not on this principle, but provides for no more than that a registered deed shall have preference over an unregistered one (Sections 56 and 57). Such an Act, I feel convinced, would fall dead in Malabar, and probably in most parts of India. The contests here are not so much between deed and deed as in regard to the integrity of one or other sets of deeds produced. For example it is rare that two parties will severally claim purchase or mortgage from the same individual, but each will bring forward some separate owner from whom title will be alleged to have been derived. If then on one side there should be a registered deed, it will be no answer to a deed produced on the other from a totally distinct source. This principle of preference to be given to registered deeds has in effect been long tried in the Act we already have (Regulation VII of 1802, Section 6), but in Malabar certainly it has afforded no temptation to resort to registration. Nothing moreover can protect parties against deeds that may be got up against them at any time and have any date assigned thereto but the invalidation of every instrument not registered within some short interval from the date of the transaction to which it relates. These observations, though but indirectly affecting the subject I have to report upon, will not, I trust, be considered out of place, for anything that can put litigation on a healthy footing in this district will have a powerful tendency to allay the irritations prevailing in it and subserve therefore to minister to the end for which my services in it have been called into requisition.

* * *

70. Another measure having the same aim of checking litigious discord which I have to recommend is the requiring that Regulation V of 1822 be brought into operation in Malabar. Under this enactment the questions chiefly in issue between landlord and tenant may be decided summarily by the Collector and in a manner to lead to amicable and equitable, as well as prompt, decisions. The suits would be mainly those for arrears of rent, but under Section 8 arbitrary ejectments and undue enhancement of rents could also be checked and prevented, and under Section 11 aggressive occupations remedied. The process of investigation which I would recommend would be that these questions should be taken up at the jammabundy. The Collector would then be in the neighbourhood of the litigants and of the lands in question in the litigation. The parties would thus not be put to the expense of journeyings, and the sources of evidence would be at hand and readily available. This would include facility for local inspections where necessary. The time being a fixed and periodical one, the litigants would not be subjected to indefinite delays, and, as it would come thus round year by year, they might be induced to settle with each other annually, and not allow, as now, arrears to run on for years together. At this period of the jammabundy the local authorities and the chief people of the district visited would be assembled together, and their help in checking false pleas and in inducing the parties to come to an arrangement together would be of the highest value. In a Court a false witness will allege anything, being in the presence of those who have no information on the subject deposed to, but if confronted with his influential neighbours, who he is aware are well acquainted with the facts of the case, there are few, if any, who would have the hardihood to attempt to beat these down with a, to them, palpable falsehood. On the receipt of such suits, I would have the Collector refer them for report to one of his chief officers, who, in the presence of the principal neighbours and local authorities, should hold his investigation and seek to bring the parties to terms, and, when this had been effected, he might take them before the Collector and have the matter definitively ratified. In cases involving too much difficulty to be thus disposed of, a punchayet might be called in under Section 15 of the Regulation. All that delay, expense, uncertainty of issue, and bickering which are incurred in regular litigation in the Courts, and which serve so much to impoverish

parties and to exasperate them the one against the other, would in this way be avoided, and the tenant might cease to look upon the landlord as one whose proceedings were of a nature to ruin him, and on his part would have nothing to tempt him to fail in that deference and respect towards his landlord which relative position would render due from him.

71. The cause why this Regulation has not been had recourse to in Malabar is simply that the Collectors have taken no means to bring it into operation. The present Collector is averse to making use of it as have been his predecessors. His objections are founded upon doubts as to the system working well from the complicated nature of suits in Malabar and the unlikelihood of parties being satisfied with the summary investigations to be held under the Regulation, and he also apprehends that the onerous duties of his office will not allow of time for meeting this fresh demand upon him. It appears to me that much of complication need not be expected in suits of the nature contemplated by the Regulation, and especially when disposed of through the intervention of neighbours already cognizant of the subjects of the litigation in the manner I have indicated. Nor would such a mode of adjusting these suits involve much demand upon the Collector's time, and any additional ministerial help he might require could be easily supplied him.

72. The value of the Regulation as handled in the way I have suggested would, I believe, be very sensibly felt. At present, as I have before had occasion to remark, the landlords in the parts where outbreaks have most prevailed are unable to recover their rents, and the system I am recommending would give them a facile course for realizing their dues, such as is least calculated to excite to animosity and at the same time draw out for them the countenance of the chief executive authority in the district, which might serve to deter the tenant from thinking of reprisals. Some measure of relief to the landlords is certainly much needed, and I see none better suited for affording them help than this one which I am now proposing. Moreover it is a remedy already afforded by existing law, and there appears to me no valid reason why that law should be placed in abeyance. It has been long in operation in the adjoining district of Canara, where private property exists in land as in Malabar, and the present Collector of Canara considers that it works beneficially. Finally, the people, to whom I have extensively appealed, have hailed with pleasure the proposition to introduce a system such as I have above propounded, and herein Moplahs and Hindus were, without an exception, of one accord.

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## No. 4.

No. 483.—Extract from the Minutes of Consultation under date the 23rd August 1853, passing orders on the Special Commissioner Mr. Strange's Report.

* * *

44. The suggestions contained in paragraph 68 on the subject of tenant rights and the tenure of family property appear highly judicious, and this paragraph will be communicated to the Judges of the Court of Sadr Adâlat for their consideration and for the issue of such orders as they may deem advisable. It will also be communicated to the Collector, who will submit his opinion upon it direct to Government at an early date. If the questions described in that paragraph as arising between landlord and tenant cannot be otherwise satisfactorily settled, it may be desirable to interfere by legislative enactment so as to fix some terms to the landlord's indefinite paramount right over the tracts of waste land and forest to which he now lays claim. It is worthy of remark that Mr. Strange here recognises, in apparent opposition to previous statements, the frequent injustice done to the tenant or occupant, more often Moplah than other caste. As he bears testimony to the fact that a perversion of justice indubitably largely prevails in the district, and as the Native Judges are chiefly Hindus, it is not to be supposed that this perversion favors the Moplah population. The Commissioner also observes "the country is notoriously teeming with false deeds and false witnesses, placing the interests of landholders in perpetual risk." It is out

of the question to suppose that this state of things is not as common with the Hindu as with the Moplah and equally an instrument of wrong and oppression.

45. The proposal in paragraph 70, that Regulation V of 1822 should be enforced in Malabar as in Canara, seems well deserving of attention; but, as it has never yet been in operation in the former province, the Government, before passing orders for its introduction there, think it proper to refer to the Collector upon the subject and to request him to report upon it through the Board of Revenue, explaining what have been the obstacles which have hitherto prevented its being put in force, and stating how they can be obviated.

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## No. 5.

From H. V. Conolly, Esq., Collector of Malabar, to B. Cunliffe, Esq., Acting Secretary, Board of Revenue, Fort St. George, dated Calicut, 30th September 1853, No. 133.

I have the honor to acknowledge the receipt of extract from the Proceedings of the Board of Revenue under date the 5th instant conveying extracts from the Minutes of Consultation of Government of the 23rd ultimo, in which I am desired to report on Mr. Strange's recommendation that Regulation V of 1822 be enforced in Malabar.

2. I beg to forward an extract from a memorandum which I drew up for Mr. Strange in March 1852, in which my difficulties with regard to the introduction of the Regulation so far as regards rent questions are embodied. I expressed my hope to Mr. Strange that he would canvass them, but he did not apparently think it necessary to do so.

Appendix A.

3. As regards that part of Regulation V of 1822 which relates to aggressive occupations, I beg to attract attention to a correspondence which passed between Mr. Strange and myself in 1843-44 when he was acting as Judge at Tellicherry. It will be seen that we then took different views on the policy of the matter, he being for and I against the introduction of the Regulation. The point which was practically settled by the then Foujdaree Adâlat according to my views slept till 1851, when it was again revived by Mr. Forsyth. A second reference to the Foujdaree Adâlat had the same effect.

Given at end of Appendix B.

4. I have little to say in addition to what I have said in these two correspondences. I hesitate, it will be seen, as to the introduction of the rent part of the Regulation from a doubt which has, as Mr. Strange allows, been felt by my predecessors as to whether it will work well. My impression is that it would be of doubtful benefit to the *tenant*.

In my memorandum of the 30th March 1852.

5. I know from experience that landlords, and especially absentee ones, will be happy to avail themselves of a tribunal which costs nothing to recover balances from tenants previous to going to the more expensive one of a Civil Court. I have more than once had requests made to me by rich Rajas to aid them in this way, but have declined from a knowledge that the tenant, even though a simple tenant, which he seldom is in Malabar, has generally paid some consideration even for his occupancy which is not entered in the bond, and a dislike therefore to give more aid against the tenant than was necessary. I have thought with the Sadr Court of 1824 that "suits for the recovery of arrears of rent from under-tenants ought to be disposed of exclusively by the regular judicial tribunal and that the summary interference of the Collector on behalf of the landholder should be restricted to the cases in which such interference may be necessary in order to the punctual collection of the revenue." The knowledge that he must go through this regular court process has a tendency, I consider, to make the landlord pause ere taking harsh measures with his tenant—a desirable point at all times, but more peculiarly so when the landlord is a Hindu and the tenant a Moplah.

He is more generally a tenant with a mortgage right.

Paragraph 26 of the Sadr Court's letter to Government, dated 20th December 1824, pages 410 to 416 of Campbell's Code of Regulations.

6. Recent events have led me to pay particular attention to the vexed question whether the landlord or tenant is most to blame in the disputes which are frequently occurring in Malabar regarding land. My impression on the whole certainly is that the fault lies more with the former—knavish tenants of course there are—but the possession of land is so prized in this country and an ejectment from it so much feared that self-interest as a general rule is sufficient inducement for the tenant to pay his fair rent.

See my letter (in memoranda) of the 15th and 29th December 1843 and 6th January 1844.

7. As regards aggressive occupation it will be seen that I have thought that the system which has always prevailed in Malabar of taking up cases of this nature under Regulation XI of 1816 as a beneficial one. It is certainly in one way more for the interests of the people as, if wronged by the Head of Police, they have their *inexpensive* appeal to the European Magistrate, whereas, if wronged by the decision made chiefly and necessarily on the Tahsildar's report, as in Canara, they have no resource but a court of law with the prestige of a European's judgment against them. In one taluk Cartenad the Head of Police decided 74 of these cases in the last six months; 20 of these came in appeal to the Magistrate, who had the advantage of the appellant's arguments to enable him to discover if there has been error or injustice. In the Canara method the whole of these cases would have been disposed of by the Collector without this *very great* advantage, with more chances of error therefore, and with double or nearly double trouble.

Section LI.

See paragraph 9.

Cartenad is however one of the heaviest of my taluks.

8. However, I shall be ready to act according to any orders which the authorities, on a review of the matter in all its bearings, may determine on.

9. To put the Board in possession of all my views I may be allowed to give here some extracts of a demi-official letter which I wrote to Mr. Strange in July 1852.

"I am desirous," I said, "to do whatever is for the real benefit of the country, but I do not wish to make a jump in the dark.

"An order for the general working of the Regulation once issued could not well be recalled.

"To introduce it without a certainty that we had sufficient *material* to work it (I presumed my difficulties with regard to the propriety of the Regulation for Malabar to be canvassed and overruled) would be questionable policy. It is the native, as I mentioned to you before, which I should think most needful. Of Europeans there is a large staff already.

"Robinson is very warm as to the benefits of the Regulation, but Robinson is from natural temperament and age more enthusiastic than I am. Maltby, you will see from the enclosed, is less sanguine. (I sent him a copy of my memorandum, but his notes, as he remarks, are hasty.)

That of the 30th March 1852.

"I cannot but remember various things which I have heard regarding the mode of working the Regulations in Canara which give me uneasiness.

"Robinson himself told me of an instance in which an arrear of cases (chiefly, I think, rent cases) had been settled in a somewhat compulsory process (by oath) in a very off-hand manner.

Some years ago.

"Elton, who, though slow, was an intelligent painstaking man, gave up his appointment rather than have to *get through* the *load* of cases he found on his shoulders.

"It was summarily disposed of (on his resignation) by being shared amongst all the Munshis, small and great, in the Huzzur, but this was evidently an unsatisfactory proceeding as it was probably a necessary one. (Mistakes, if mistakes there were, in any of these instances would not be so likely to cause irritation between rival castes in Canara as in Malabar.)"

10. To this demi-official Mr. Strange replied very much in the words given in his public letter to Government, adding that he thought much might be done with reference to the weight of work by increased industry. To which I replied—

"In many of our taluks there is not only *full* work for the servants but more. Much is routine no doubt, but it is a routine which being connected with revenue and police cannot be done away with.

"A good deal is consequently imposed on volunteers, and the Tahsildar himself generally spends a modicum of his pay for such aid as is indispensably and immediately required. The Tahsildar's pay will be reduced one-fifth at the end of the year (in consequence of the abolition of the tobacco monopoly) and the smallest extra deduction from it will be a grievance. I mention this with reference to your idea that industry will supply the want of aid."

From 132 to 107.

11. I have entered into this lengthy explanation in view to request the Board, should they deem it well that the Regulation V of 1822 be enforced, to take into

consideration the amount of aid that should be afforded. The European who would most require ministerial aid would be the Special Assistant, on whom the most delicate business, *i.e.*, that of settling rent questions between Moplahs and Hindus, would primarily fall.

Mr. Collett has at present only one or two Gumastahs on small pay such as I was able to spare him out of my own Cutcherry when his appointment was allowed. Mr. Collett, from his intimate knowledge of the language and customs of the people, is as independent of native aid as any European gentleman can well be, but it would not be right to leave him to his present resources.

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## No. 6.

From H. V. Conolly, Esq., Collector and Magistrate of Malabar, to T. Pycroft, Esq., Secretary to Government, Judicial Department, Fort St. George, dated Calicut, 8th October 1853, No. 34 B.

I am directed in the Extract from the Minutes of Consultation, under date the 23rd August last, to submit my opinion on the suggestion contained in paragraph 68 of Mr. Strange's report of the 25th September 1852 on the subject of tenants' rights and the tenure of family property.

Paragraph 44.

2. Mr. Strange's views on the matter of tenants' rights I think deserving of the best attention, and shall be glad to find that the wisdom of the Sadr Adâlat, to whom I see they have been furnished, is able to devise means for their being practically carried out.

3. The landed tenures of Malabar, as Mr. Strange observes, were originally conceived in much wisdom and forethought. The principal object in view no doubt was to secure the inalienable (or all but inalienable) right of the Hindu proprietor to his land. As with the Jews under the Mosaic dispensation, it was held to be a religious duty in Malabar not to part with a family estate absolutely. The landlord's exigencies might force him to relinquish his ground for a season, but arrangements were devised by which all incumbrance should cease and the land revert to him sooner or later.

4. But with all this solicitude for the paramount rights of the landlord, the claims of the tenant were not overlooked. No man, it was held, should be ejected from a substantial holding without obtaining a reimbursement for any *bonâ fide* improvements which he might have effected during its occupancy. The tenants' rights so much spoken about and wished for in Ireland have in principle therefore been in the possession of the tenants of Malabar from time immemorial. Were the ancient rules which regulate the rates for improvement revised and increased with reference to the increased value of property, and were these rules still further improved as suggested in succeeding paragraphs, any solid and thorough grievance from ejectment would not, as a general rule, be felt in Malabar. It would always be some annoyance to a man to leave a property which is endeared to him from associations. A man might be turned out of his property by false accusations, supported by false deeds, and the amount adjudged to him by assessors on his ejection as improvement or tenant right might from evil influence be fixed lower than it should have been. But notwithstanding these (of course exceptionable cases) there can be little doubt that, were the peculiar laws of the country fully carried out and a little improved, the tenant of Malabar would be in as good a position, to say the least, as the tenant in any other part of the world.

5. According to old custom, land, as a general rule, is not leased in Malabar at its full value. But the apparent lightness of lease is balanced by the custom of insisting on fines and presents of different natures at different intervals; fines are paid on investiture, on renewals, and on various other occasions. It is a common complaint of the tenant that allowance is not made for these cesses, which it is not customary to enter in the lease bonds, and that a greedy landlord, in order to obtain fresh fines from a

There is no written law to this effect, but the usage is undoubted.

new tenant, frequently departs from the spirit and intention of the old laws, which, as Mr. Strange remarks, fix twelve years as the proper duration of a lease, and ousts the prior occupant before he has had time to recover his outlay. It would be a great point, in order to avoid what all must allow to be a breach of faith and departure from the spirit of the ancient local rules, were it possible to change the feeling and practice of the janmis or proprietors on this point and to make them acknowledge in writing everything they received from their tenants or mortgagees. A law similar to that contained in Section VII of Regulation XXX of 1802 would meet this object. Whether it could be passed without the consent of the janmis is for the consideration of the higher judicial authorities.

"Proprietors or farmers of land shall not levy any new assessment or tax on the ryots under any name or under any pretence; exactions other than those consolidated in the puttah, or otherwise authorised by Government, shall, upon proof, subject the proprietor or farmer to a penalty equal to three times the amount of each exaction."—Section VII, Regulation XXX of 1802.

6. The Government think it may possibly be desirable to interfere by legislative enactment so as to fix some term to the landlord's indefinite paramount right over the tracts of waste land and forest to which he now lays claim. To this I beg to observe that the injury which these paramount rights have certainly a tendency to produce is in a measure neutralised by the universally acknowledged practice of the country. All land in Malabar, as I remarked in a memorandum drawn up for Government in 1840, is strictly private property, and the rights of the janmakkár or proprietor are held to be inalienable whether it be cultivated or whether it be left waste. So far is this carried that it is laid down by the standard authority on all matters relating to the land tenures of Malabar (Major Walker) that should a person bring into cultivation a piece of waste ground which appeared to have no claimant, the owner, on making his appearance after any lapse of time, would have a right to resume his property, paying for the improvements that had been made. Extensive and unbounded indeed as these rights at first appear, they have their limits. A man is not allowed to keep his land waste unless he agree to pay the Government the tax they would derive from its cultivation. Should he decline to do this, the land is delivered over to any person who will undertake to till it, a specification being made that out of the profits deducible from its cultivation a certain portion (about 15 per cent.) shall be given to the proprietor as the landlord's share.

*I.e.*, if A, a stranger, applies to the authorities for leave to reclaim waste (as is constantly done), B, the landlord of that waste, cannot bar A's purpose except by taking the responsibility himself.

7. The only practical difficulty which has presented itself in this matter is that alluded to in my letter to Mr. Strange of the 10th September 1852, in which I have shown that Hindu landlords have at times attempted to hinder the location of Moplah cultivators on waste by preventing them from acquiring in fee simple so much ground as would suffice for a mosque and burial ground. But such cases are not frequent, and I would fain hope that the personal representations of the European local authorities will be found sufficient to induce the landlords to listen to reason without the necessity of any extraordinary interference on the part of Government.

Referred to in paragraph 22 of my letter to Government, dated 26th February 1853.

8. The second point animadverted on by Mr. Strange is the practice of considering the property of a Hindu family to consist of a number of individual shares, any of which may be divided off from the estate and forfeited to a creditor of the assumed individual shareholder; while the theory of a Hindu family in Malabar is that the head thereof has entire control therein; that his signature alone can be taken for any exigencies of the family, for the due support of the whole of whom he is responsible; and that the property is vested in him for the common good of all and is indivisible. There is no doubt that Mr. Strange is correct as to his interpretation of the law of Malabar as regards the indivisibility of family property. It will be found, I believe, that the law has been fully acknowledged by the highest judicial authorities at Madras on special appeals from interested parties. Any irregularities in this respect on the part of the subordinate tribunals would, I presume, be easily rectified by a declaration from the Sadr Adâlat of what was deemed proper.

I give no opinion on the policy of the law, which I think, however, is liable to much question.

9. Of the advantage of introducing a system of local registration similar to that recommended by Mr. Strange in paragraph 69, &c., there can, I think, be no doubt. I have myself proposed it, as have, I believe, other officials more than once.

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No. 681.

JUDICIAL DEPARTMENT.

EXTRACT from the MINUTES OF CONSULTATION under date the 15th November 1853.

READ the following letter from the Collector and Magistrate of Malabar.

(Here enter 8th October 1853, No. 34 B.)

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ORDERED that a copy of the above report be furnished to the Court of Sadr Adâlat for their information. The Judges will advise Government of any instructions which they may have issued, or purpose issuing, on the subjects referred to them in Extract Minutes of Consultation, 23rd August 1853, paragraph 44.

(Signed) T. PYCROFT,
*Secretary to Government.*

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No. 7.

EXTRACT from the PROCEEDINGS of the SADR ADALAT under date the 13th February 1854, No. 18 A.

READ again Extract from the Minutes of Consultation under date the 23rd August 1853, No. 483, communicating an extract from a report from the late Special Commissioner in Malabar, dated the 25th September 1852, containing suggestions on the subject of tenant rights and the tenure of family property in Malabar.

READ also letter under date the 20th October 1853 from the Civil Judge of Tellicherry.

READ also Extract from the Minutes of Consultation under date the 15th November 1853, communicating a report from the Collector and Magistrate of Malabar on the suggestions contained in paragraph 68 of the late Special Commissioner's letter under date the 25th September 1852, and requesting the Judges to advise Government of any instructions that may be issued by them on the subject.

READ also letter under date the 14th December 1853 from the Civil Judge of Calicut.

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IN the report of which an extract was communicated to the Court of Sadr Adâlat, with the extract from the Minutes of Consultation under date the 23rd August last, the late Special Commissioner draws attention to certain points upon which he considers that a declaration of the rules to be observed might advantageously be promulgated by the Sadr Adâlat with a view to ensure the recognition of the principles upon which the landed tenures in Malabar are based; and which he states have not always been duly attended to by the local Courts. The first point noticed by the Special Commissioner is the right vested in the tenant, according to ancient usage in Malabar, to retain the land for twelve years under certain reservations, "as when the landlord, if a Raja, dies when he should renew with his successor, or when the landlord requires more money on the land and the tenant will not provide it and it is obtainable from another, or when rents are not paid." The next point upon which the Special Commissioner considers that a practice has grown up inconsistent with the current usage of the country is the liability of family property for debts contracted by individual members of it, other than the Karnavan or managing member; the idea having been introduced "that a joint share in property involves a number of individual

shares, any of which may be divided off from the estate and forfeited to a creditor of the supposed individual shareholder; whereas the theory of a Hindu family in Malabar is that the head thereof has entire control therein; that his signature alone can be taken for any exigencies of the family, for the due support of the whole of whom he is responsible; and that the property is vested in him for the common good of all and is indivisible."

2. The Special Commissioner further advocates the enforcement of such a system of registration as would assure to landholders, whether proprietors or mortgagees, the integrity of their tenures and prevent their rights being nullified by fictitious titles asserted against them.

3. It appears from the letter of the Civil Judge of Tellicherry under date the 20th October last, to whom as well as to the Civil Judge of Calicut the extract from the Special Commissioner's report was referred, that in the zillah of Tellicherry the rights of tenants holding on a lease under condition of improvements are fully respected, and that no right of ejection on the part of the landlord within the customary period of twelve years is recognised by the Courts, otherwise than on failure of payment of the stipulated rent or for other admissible reasons to which the Special Commissioner has adverted. In regard to the question of the divisibility or otherwise of the property of a family for the liabilities of an individual member, the Civil Judge of Tellicherry states that although a rule permitting such a division has in some instances been recognised in the late Provincial Court and also by the Court of Sadr Adâlat, the correct rule has been clearly laid down in the proceedings and decrees of the Court of Sadr Adâlat noted in the margin, in accordance with which all contracts entered into by the managing member of a family, with the exception of the permanent alienation of landed property, which cannot be effected without the written concurrence of the principal junior members, are presumed to be made on the part of the family collectively, and are binding as regards the entire property; and in the event of a party seeking to set aside any such contract on the ground of fraud or declared dissent on the part of the family in general, the onus of proving such plea rests with the party desirous of invalidating the acts of the head of the family.

Sadr Adâlat Proceedings, 6th March 1843, paragraphs 11 and 12.
Appeal Suit No. 69 of 1844.
Special Appeal Suit No. 38 of 1852.

4. As regards the liability of family property for the debts of a junior member the same officer observes that the principle laid down by the Court of Sadr Adâlat in their decree in Special Appeal Suits Nos. 15 and 27 of 1850 as respects undivided Hindu families in general is equally applicable to the family communities of Malabar; and unless the party seeking to enforce such contract against the family can establish the fact of the junior member having acted in some instances with the delegated authority of the Káranavan or managing member, the debt should be considered of a strictly private and personal nature, and no claim on the family property or any portion of it should be admitted by the Courts.

5. Adverting to the uncertainty in Malabar which at present prevails with regard to questions of possession of landed property whenever the fact of such possession is a point in issue in a suit, owing to the distribution of annual puttahs not being customary in the district, Mr. Frere suggests that the difficulty might in some measure be met if in the receipts for nigidi or Government revenue granted by the village authorities the names of the parambas or rice-fields for which the amount may be paid were stated in addition to those of the parties by whom it is paid, and in whose names the lands are registered respectively.

6. The Civil Judge of Calicut is of opinion on the first point adverted to by the Commissioner that the real root of the evils complained of is to be sought not so much in the neglect by the Courts of the local rules which govern the landed tenures of the district as in the vagueness of the rules themselves in regard to the various fines and cesses leviable by the landlords upon their tenantry, as well as in the very loose way in which leases of the kind under discussion are everywhere drawn up in the zillah of Calicut; and he advocates extensive alterations in the forms in which such deeds are executed with a view to remedying the defects adverted to.

7. In regard to the theory of a Hindu family in Malabar and the liability of property belonging to it for all contracts entered into by the managing member, the Civil Judge concurs with the Special Commissioner and recommends that a declaration

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of the law should be promulgated, the Courts having "in numerous individual instances either overlooked or ignored its existence."

8. The Collector of Malabar in a letter addressed to Government, which has been communicated to the Court with the Extract from the Minutes of Consultation under date the 13th November last, expresses his concurrence generally in the observations of the Special Commissioner on the two principal points noticed by him, and in order to prevent the frequent departures from the spirit and intention of the old laws which fix twelve years as the proper duration of a lease, he suggests the enactment of a law similar to that contained in Section VII, Regulation XXX of 1802, rendering compulsory the execution by the janmis of written receipts for everything received by them from their tenants or mortgagees and prohibiting the collection by them of any assessment or tax not authorised by the terms of their deeds of lease or mortgage. The Collector also adverts to the rules which regulate the rates of payment for improvements made by the tenants as not providing sufficiently for the reimbursement of the tenant with reference to the increased value of property.

9. Adverting to the remark in the Extract from the Minutes of Consultation under date the 23rd August last that "it may possibly be desirable to interfere by legislative enactment so as to fix some term to the landlord's indefinite paramount right over the tracts of waste land and forest to which he now lays claim. To this I beg to observe that the injury which these paramount rights have certainly a tendency to produce is in a measure neutralized by the universally acknowledged practice of the country. All land in Malabar, as I remarked in a memorandum drawn up for Government in 1840, is strictly private property, and the rights of the janmamkar or proprietor are held to be inalienable whether it be cultivated or whether it be left waste. So far is this carried that it is laid down by the standard authority on all matters relating to the land tenures of Malabar (Major Walker) that should a person bring into cultivation a piece of waste ground which appeared to have no claimant, the owner, on making his appearance after any lapse of time, would have a right to resume his property, paying for the improvements that had been made. Extensive and unbounded indeed as these rights at first appear, they have their limits. A man is not allowed to keep his land waste unless he agree to pay the Government the tax they would derive from its cultivation. Should he decline to do this the land is delivered over to any person who will undertake to till it, a specification being made that out of the profits deducible from its cultivation a certain portion (about 15 per cent.) shall be given to the proprietor as the landlord's share.

That is, if A, a stranger, applies to the authorities for leave to reclaim waste (as is constantly done), B, the landlord of that waste, cannot bar A's purpose except by taking the responsibility himself.

"The only practical difficulty which has presented itself in this matter is that alluded to in my letter to Mr. Strange of the 10th September 1852, in which I have shown that Hindu landlords have at times attempted to hinder the location of Moplah cultivators on waste by preventing them from acquiring in fee simple so much ground as would suffice for a mosque and burial ground.

"But such cases are not frequent, and I would fain hope that the personal representations of the European local authorities will be found sufficient to induce the landlords to listen to reason without the necessity of any extraordinary interference on the part of Government."

10. The Court of Sadr Adâlat fully concur with the late Special Commissioner and the officers whose views have been stated in the foregoing paragraphs as to the inexpediency of any departure by the Courts from the ancient usages which regulate the relations of landlord and tenant and the liabilities of families governed under the law of Marumakatayam in Malabar, and they resolve to enjoin upon the several judicial authorities in that province that they be careful to give effect to all such usages in their decisions.

11. In all cases in which tenants on taking leases of rice land may have paid a fine to the landlord, the title which this gives the tenant to a definite term for his lease should be invariably upheld, notwithstanding that such terms may not have been expressed in the lease; and as regards paramba lands, the tenant's right to occupancy for a term of years should be respected wherever such right obtains.

12. The Court of Sadr Adâlat do not deem it expedient to recommend the enactment of a law such as that advocated by the late Civil Judge of Calicut, requiring that all leases should contain full particulars of the conditions for which they provide and of the exactions to which the lessees are liable, or that mortgage deeds should specify the full sum advanced by the mortgagee. There are minute peculiarities of usage connected with these matters on which it would be difficult to legislate without disturbing long existing prejudice and feeling.

13. In the opinion of the Court a revision of the rules which regulate the rates of reimbursement for improvements effected by tenants to lands held by them on Kuḷikkânam tenure, so that the rate should be according to the actual value of the product planted by the tenants and not the nominal value fixed by usage, which is far below the actual value, would be very desirable, but this is a point which affects long established usage, and with which consequently it would not be expedient for the Legislature to interfere.

14. In regard to the liabilities of families governed by Marumakkattâyam usage, the Court deem it proper to observe that it is clearly an error to presume that each member of a family is possessor of an individual share in the estate available for the discharge of his debts, the rule being that in all such families the family property is only liable for obligations incurred by the head of the family and for its uses.

15. The only remaining point adverted to in the Special Commissioner's report is the want of a general system of registration, and as some remedy for this want, which undoubtedly is much felt in Malabar, the Court of Sadr Adâlat resolve to recommend to Government that the Collector be directed to require that all receipts for revenue shall specify the names of the lands for which the payment is made, that of the party on whose account it is made, and that of the occupant of the land. If this precaution be adopted, the Court anticipate that the difficulty which is now so often felt in determining questions of possession will be materially decreased.

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Ordered that extract from these Proceedings be forwarded to the Secretary to Government in the Judicial Department for the purpose of being laid before the Right Honorable the Governor in Council.

Ordered also that extract from these Proceedings be sent to the Civil Judges of Calicut and Tellicherry for communication to the several judicial authorities in those zillahs.

(True Extract.)

(Signed) A. J. ARBUTHNOT,
*Acting Registrar.*

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No. 8.

Revenue Department.

Extract from the Proceedings of the Board of Revenue, dated 20th March 1854.

Read Extract Minutes of Consultation dated 23rd August 1853, calling for a report upon the expediency of enforcing Regulation V of 1822 in the district of Malabar, upon the subject of surveying and assessing the Môdan or hill paddy-lands, and as to changing the method in which his allowance is made to the Kondotti Tangal.

(Here enter No. 483.)

Read letter from the Collector of Malabar, dated 30th September 1853.

Submitting his views on the recommendation that Regulation V of 1822 be enforced in Malabar.

(Here enter No. 133.)

**Read** letter from the Collector of Malabar, dated 30th September 1853.

**Giving** his opinion upon the survey and assessment of the Môdan lands and the change of payment to the Kondotti Tangal.

(Here enter No. 132.)

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As regards the first subject the Collector appears to have two principal objections to carrying out this enactment, first, that it would be generally distasteful to the people and of uncertain benefit to the tenant from the various conditions which affect the contract between him and the landlord, and which are mostly undefined in the lease; and secondly, that the present establishment—both European and Native—is insufficient to carry out the law in its integrity.

P. 5.

2. On the first point it is stated that the "tenant in Malabar is seldom a simple tenant, but more generally has a mortgage right on the property, and has usually paid some consideration even for his occupancy which is not entered in the bond," and on this account he has more than once declined to interfere when requested by landlords to recover for them arrears of rent, and he quotes, as expressive of his own opinion, the remarks of the Sadr Adâlat in 1824 that arrears of rent should be recovered by a regular suit before the judicial tribunals, and that the Collector's interference should be restricted to the degree necessary for the due realization of the revenue.

To Government, 20th December 1824.
P. 26.

3. These sentiments of the Sadr Adâlat, it is to be remarked, were duly laid before the Government. The Regulation has notwithstanding continued as portion of the law. It was expressly framed for the better protection of the ryot or under-tenant against the powers vested in the landlord by Regulations XXVIII and XXX of 1802, and the Board do not doubt that it has subserved this purpose in an eminent degree and that it is a most useful enactment in the hands of the Collector. Indeed, it is questionable how far the Collector is justified in not carrying out the provisions of a law laid down for his guidance upon an application under it.

4. In referring the landlord to the Civil Courts, Mr. Conolly relinquishes the authority of those Courts given to himself by summary cognizance together with the benefits to the people contemplated by the transfer of authority. By being brought into immediate contact with the people, the Collector has a greater knowledge of their habits and feelings, and is moreover the natural source to which the ryots of the district would look for restitution and redress. It is important, the Board think, to favor this latter feeling and to discourage references to the Courts. It was the object, they believe, of the framers of this Regulation in thereby giving Collectors the jurisdiction of the Courts to induce a settlement of disputes by the authorities in more immediate intercourse with the inhabitants rather than to force them to the Courts under the Regulations of 1802.

Marginal note to paragraph 7, Appendix A.

5. The Collector states that the tenant is seldom a simple tenant, but generally one with a mortgage, or as having paid some fine or institution fee, and he thinks that the Regulation is favorable to the harsh landlord, who is checked, as he conceives, by being obliged to have recourse to a suit in the Courts—a check the more necessary, he observes, in the case of a Hindu landlord and a Moplah tenant.

6. The Board cannot altogether concur in these views. As before remarked, the Regulation was expressly enacted for the better protection of the ryot, though it also supports the interest of the just landlord. If the demand of the latter be correct, the Board think that he is entitled to the facilities of redress afforded by the law in his favor; and if, on the other hand, the landlord is in the wrong, the tenant has the additional support of the Collector, who will declare his opinion as to the real nature of the demand, leaving the landlord to the more expensive and difficult process of a regular suit.

7. A district indeed in which disputes between landlord and tenant are of frequent occurrence, and where the speedy adjudication of such questions would remove

many of the evils consequent upon doubt and delay, appears to the Board the fittest field for the operation of the summary cognizance delegated by the law under discussion.

8. As to the settlement of cases of aggressive occupation, the Board see no objection to the Collector as Magistrate having recourse to Regulation XI of 1816 if he so desires it, as the inquiry under it would give him the assistance of native agency whose scrutiny would materially aid him in forming his own judgment.

9. The Board have hitherto supposed that Covenanted Officers alone could exercise the powers of Regulation V of 1822, and under this view, in which they are joined by Mr. Conolly, it would be perhaps impossible that either he or his assistants could dispose, without additional covenanted aid, of the numerous rent questions which it is stated are advanced in Malabar; but if these powers could be delegated to his native officers, or if, as the Commissioner (a high authority on the construction of the law) has suggested, the preliminary inquiry might be made by the District Officer and the case reported for final judgment by the Collector, one great obstacle would be removed to the effective exercise of the Regulation, and as it appears that the Collector does occasionally take up cases under that enactment, it is probable that he will have no objection to its more extensive use when he finds that he may transfer the primary investigation to his native agency, reserving to himself the ultimate decision. Even in this case an increase to his establishment might be required, but not, the Board imagine, to any great extent.

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No. 9.

JUDICIAL DEPARTMENT.

EXTRACT from the MINUTES OF CONSULTATION under date the 23rd March 1854, No. 221.

READ the following extract from the Proceedings of the Sadr Adâlat.

(Here enter 13th February 1854, No. 18 A.)

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THE Right Honorable the Governor in Council approves the instructions addressed by the Judges of the Court of Sadr Adâlat to the judicial authorities in the zillahs of Calicut and Tellicherry on the subject of tenant rights and the tenure of family property in Malabar.

2. The Governor in Council resolves to call upon the Collector of Malabar, through the Board of Revenue, for his opinion on the suggestion emanating from the Civil Judge of Tellicherry and supported by the Court of Sadr Adâlat, viz., that as some remedy for the want of a general system of registration in Malabar it be required that all receipts granted for payment of revenue in that district shall specify the names of the lands for which the payment is made, that of the party on whose account it is made, and that of the occupant of the land. Should the Collector be of opinion that his suggestion may be adopted, he will state whether the receipts might not be according to printed forms, with columns showing the several particulars above noticed.

(Signed) T. PYCROFT,
*Secretary to Government.*

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No. 10.

EXTRACT from the MINUTES OF CONSULTATION under date the 27th April 1854, No. 503.

READ the following extract from the Proceedings of the Board of Revenue.

(Here enter 20th March 1854, No. 121.)

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WITH the above extract from their Proceedings the Board of Revenue submit, with their own opinion thereon, two letters from the Collector of Malabar in which that officer has reported on certain measures recommended by the Commissioner for Malabar in his review of the Moplah outbreaks in that province.

These measures are—

1*st.*—The introduction of Regulation V of 1822 into Malabar.

* * *

2. With regard to the first and most important of these questions, viz., as to the expediency of giving effect to the provisions of Regulation V of 1822 within the district of Malabar, the Collector has forwarded copy of a memorandum upon the subject drawn up by him for the Special Commissioner in 1853, as also copies of the correspondence relative to the introduction of the Regulation which had passed between himself and the judicial officers of the province in previous years, and has expressed himself doubtful whether the resort to the provisions of the enactment would be expedient or would, on the whole, be to the benefit of the tenants. The Board do not admit the validity of the objections started by the Collector.

3. The Honorable the Governor in Council observes that the enactment in question has long been acted upon in the adjoining province of Canara, where the tenures of landed property are no less complicated than those which obtain in Malabar, and that frequent reference is made by Mr. Conolly to the mode in which it has been found to operate in the former province. Before coming to a conclusion in regard to the propriety of extending the Regulation to Malabar, he would wish to receive a full report from the Collector of Canara, through the Board, as to the manner and extent to which it is carried out in his district, the difficulties, if any, which are found practically to attend its exercise, and its advantages and disadvantages. In submitting this report the Board will accompany it with any remarks that may seem to them to be called for.

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EXTRACT from the PROCEEDINGS of the BOARD OF REVENUE, dated 1st June 1854.

ORDERED that the foregoing Extract Minutes of Consultation and the Board's Proceedings to which it refers be communicated to the Collectors of Malabar and Canara respectively.

3. Mr. Maltby will be so good as to submit the full report called for by Government in paragraph 3.

(True Extract and Copies.)

(Signed) B. CUNLIFFE,
*Sub-Secretary in charge.*

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No. 11(*a*).

From F. N. MALTBY, Esq., Collector of Canara, to the Secretary to the Board of Revenue, Fort St. George, dated Mangalore, 19th July 1854, No. 11 A.

I HAVE the honor to report upon the working of Regulation V of 1822 as applied in the district to disputes between landlord and tenant in compliance with the requisition contained in extract from the Proceedings of the Board of Revenue under date the 1st June.

2. The Regulation has for a long period been very extensively acted upon in this district, and, I think, with excellent effect. The tenures of this district are, as observed by the Government, of a complicated nature; but the tenants may generally be divided in the following classes—tenants at will (chalgueni), tenants in perpetuity (molgueni), and tenants for a term of years. The last are very rare, except in a modified form, as thus: A sells to B his land with a power of redemption at the end

of ten years, and B leases to A the said land at a rent equivalent to the yearly interest of the money. Here A becomes tenant to B for this term of years. Mortgages on similar terms are of everyday occurrence.

3. These, I think, comprise the principal forms of tenure.

4. The subjects of dispute which commonly come before us are—

*1st.*—Whether the tenure is a tenure at will or perpetual tenure.
*2nd.*—What is the sum for which the land was leased.
*3rd.*—Whether the rent has or has not been paid.

5. Viewing the Regulation as a means of enabling the landlord to collect his rents, I think its working is efficacious, and I have no reason to think that it is often resorted to as a means of oppression. If the landlord applies for Police assistance to prevent a breach of the peace, this is invariably granted and the attachment is made in the presence of the village authorities. It seldom occurs that property is removed. A list of the property is made out, and generally the tenant gives security and the property remains in his possession, or, if removed, it is only to the house of his surety.

6. The subjects of appeal on the part of the tenant are commonly as follows:—

That the party who has made the attachment is not really the landlord.
That he has paid the rent to another party who claimed it as landlord.
That he has paid the rent, or a portion of it, already to the party who makes the attachment and the attachment is fraudulent.
That he is ready to pay the rent, but the landlord has so worded the receipt as to show him to be a tenant at will, whereas he is in reality a perpetual tenant.

7. It is, I think, very rare for application to be made by the landlord under this Regulation to the Collector to oust a tenant. The manner in which the Regulation as concerning ejectment generally comes before us is in the form of a petition either from the tenant that whereas he has for many years cultivated the land and is a fixed tenant, the land has been forcibly ploughed by another party—this party states that he received it from the landlord, and the landlord states that the former tenant was a tenant at will and that he has given the land on lease to the other party; or else the petition is from the landlord or new tenant, that when cultivating the land he has been resisted by A. A in answer states that he has had long possession, that he has made improvements, and that the landlord has no right to eject him, and the other party is the aggressor.

8. I may here mention that it is the practice in this district to refer all these cases for local investigation by the Tahsildar, and I am not aware that the legality of this practice has ever been called in question. The Tahsildar forwards the proceedings to the Collector with his opinion, and upon this record the Collector passes his decision.

9. In disposing of all these cases the principle generally acted upon is to disturb as little as possible present possession. Many of the perpetual tenants of this district hold their lands by express stipulation (under a "Molgueni chitta"), but perhaps more hold by prescription. If therefore it appears that a tenant has cultivated the land at an unvarying rent for a series of years, or if he has laid out his capital in improvements, the inference that he is a Molgueni tenant would be so strong that the Collector would deny the landlord's power to eject by summary process. He would confirm the tenant in possession, leaving the landlord to seek his ejectment by a regular suit in the Court.

10. These questions assume almost every shade, from cases of clearly defined perpetual tenancy to mere occupancy, and from fair ejectment to decided criminal trespass; but whether to dispose of the case as a Police or Revenue case depends on the judgment of the officer. But in disposing of such cases the general principle above stated is kept in view. I think it may be said that the operation of the Regulation in this district gives important aid to the landlord who has clearly defined rights in levying his rents and regulating his cultivation, but interposes the Collector between the landlord and the tenant in doubtful cases. This, it appears to me, was the object



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of the Regulation. This, I think, is accurately described in the Board's Proceedings when they state—

"If the demand of the landlord be correct, the Board think that he is entitled to the facilities of redress afforded by the law in his favor; and if, on the other hand, the landlord is in the wrong, the tenant has the additional support of the Collector, who will declare his opinion as to the real nature of the demand, leaving the landlord to the more expensive and difficult process of a regular suit."

11. The fact is that Regulation V of 1822 leaves too much in favor of the tenant. By the letter of that law the Collector is to judge of the amount of rent to be paid in all cases, and if he is satisfied that the rent is sufficient the landlord cannot eject; but in practice this is modified, and if the tenant is clearly a temporary tenant, the Collector considers the landlord entitled to adjust his rent as he sees fit, and unless the tenant agrees to the terms the Collector enforces the authority of the landlord to eject.

12. I think that nearly half the duty of the Tahsildars and the European officers consist in disposing of these cases and the allied cases which they dispose of as Magistrates. The result I believe to be excellent, and I do not think that under any other system could the dealings between landlord and tenant be so well adjusted. The nearer to the village these cases can be settled, the more forbearance on the part of the landlord and fair dealing on the part of the tenant will be ensured. It is when these cases are tried at a distance that false evidence is successful and the feelings of both parties are exasperated.

13. There is no doubt that the addition of this duty to their other functions overtaxes the energies both of the Tahsildars and European officers in this district, and it is impossible to dispose of the petitions received with the punctuality that would be desirable. But this difficulty would be best met by breaking up the larger taluks in which population is double what it was when our present establishments were formed and wealth has multiplied still more.

14. The number of cases disposed of in a year is shown below. It is current rent only, not arrears of previous years, that can be thus collected.

| Cases remaining undisposed of at the end of 1852. | Cases filed in 1853. | Cases disposed of in 1853. | | | |
|---|---|---|---|---|---|
| | | Decreed on merits. | Dismissed for default. | Settled by Razinamah. | Total disposed of. |
| 1,780 | 2,235 | 935 | 584 | 522 | 2,041 |

15. Since writing the above the annexed order, passed by Mr. Viveash, has come to my notice. It was passed in order to bring Regulation V of 1822 into operation, and will show that what I have above described as the practice now prevailing is in accordance with the principle laid down by Mr. Viveash in this order, which it will be observed in some degree modifies the Regulation.

16. I believe I have touched upon the principal points worthy of remark in the working of Regulation V of 1822 in this province, but I would have observed that I am led to doubt whether the question now discussed with reference to Malabar can be so properly considered as the introduction of Regulation V of 1822 into that province as the introduction of Regulations XXVIII and XXX of 1802. I am led to this remark by a note from Mr. Conolly, in which he expresses his doubt whether it would be wise to give the Zamorin power to distrain the property of Moplah tenants, when a disturbance might be created and the Magistrate not have the power of prevention. If so, the question is not whether Regulation V of 1822 shall be introduced to protect the tenants under the exercise of the power of summary distraint by their landlords, but whether the power of summary distraint shall be introduced.

17. The Board of Revenue appear to be of opinion with Mr. Strange that it is very desirable that all cases between landlord and tenant should come in the first instance before the Revenue authorities as those most likely to bring the dispute to a satisfactory settlement. Upon this point I have no hesitation in stating my opinion

that this district affords evidence of the advantages of such a system. But if the question is whether in the present state of Malabar a power of summary distraint which has not hitherto been exercised shall be now introduced, modified by Regulation V of 1822, I do not think that this district affords an example applicable to the case, for although our tenures are complicated, we are free from the hostility between rival classes which appears to exist in Malabar.

18. Regulations XXVIII and XXX of 1802 were framed to meet circumstances different from those of either Malabar or Canara, and the modifications by V of 1822 are so obscure that a re-enactment of that Regulation was pronounced to be necessary almost as soon as it was published. It is only by considerable deviations from the letter of the law that they are made applicable to unsettled districts. I would therefore venture to suggest whether a new enactment requiring that preliminary notice of ejectment or distraint should be given to the Collector, and otherwise consolidating and improving the law of landlord and tenant, would not be more likely to meet the necessities of the case than the introduction of the existing law.

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No. 11(*b*).

REVENUE DEPARTMENT.

EXTRACT from the PROCEEDINGS of the BOARD OF REVENUE, dated 21st September 1854, No. 452.

READ letter from the Collector of Canara, dated 19th July 1854, reporting upon the operation of Regulation V of 1822 in his district.

(Here enter No. 68.)

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THE Board have but few remarks to offer upon the letter above recorded in addition to their observations contained in their Proceedings of the 20th March 1854. Mr. Maltby's opinion would appear to bear out their own that the Regulation in question is capable of fully meeting disputes between landlord and tenant, however complicated their nature or however intricate the tenure on which the land is held.

2. The Collector states that the enactment is in full operation in his district, and though the time and powers of both the Native and European authorities are severely taxed in adjudicating disputes under this law, the exercise of its powers has acted beneficially upon the people at large.

3. He is further of opinion that rent disputes should, in the first instance, more peculiarly come before the Revenue authorities as those most likely to bring the case to a satisfactory settlement.

4. It has been the custom in Canara to draw largely upon native agency in deciding cases under this Regulation, the Tahsildar making the local investigation and forwarding the proceedings, with his opinion, to the Collector, and the latter officer passing judgment on the record thus transmitted.

5. The Board were not assured that this course could legally be followed, but this point being allowed, it was the arrangement which they advocated for Malabar as giving the advantages of an inquiry on the spot and less encouragement to false testimony. In Malabar at present the restrictive powers of the Regulation are brought into operation against the landlord, but when he solicits its exercise in his favor, when he requests that his demands should be inquired into, and, if found correct, that the necessary assistance should be granted him for the recovery of his rights, the Collector usually declines to interfere and refers the applicant to the Civil Courts. Mr. Maltby's remark at the conclusion of paragraph 12 of his letter contains much practical truth. "It is when these cases" he observes, "are tried at a distance that false evidence is successful and the feelings of both parties are exasperated."

6. Mr. Maltby seems to infer from a remark of Mr. Conolly's that the real point at issue is the introduction of the law of distraint at all into Malabar, where the feelings of the landlord and tenant are often

Paragraph 16.
Paragraph 18.

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so hostile, and suggests that a new enactment be drawn up requiring preliminary notice of distraint and ejectment being given to the Collector.

7. Putting aside the question of the power of Government to enforce the law in the district of Malabar, which it is not the Board's province to discuss, they do not see that any new law is necessary in substitution of Regulation V of 1822, which for all practical purposes enables the Revenue authorities to cope with any question of rent which may come before them.

Section IV.
Clause 1, Section III.
Section VIII.

8. The notice of distraint is already obligatory under the present law, nor can the property seized be sold or the under-tenants ejected without the permission of the Collector.

Paragraphs 3 and 6, Board's Proceedings, 20th March 1854.

9. The Regulation is one, as before observed, pre-eminently in favor of the tenant, and therefore should be especially useful in Malabar, where the tenant, as Mr. Conolly declares, requires protection from a landlord usually harsh and exacting. If the Magistracy cannot enforce their judgments, it is not clear how the Civil Courts execute their decrees of sale and ejectment, for these tribunals, if opposed, naturally look to the Police authorities for effective assistance.

(A true Extract.)

(Signed) B. CUNLIFFE,
*Sub-Secretary in charge.*

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## No. 12.

REVENUE DEPARTMENT.

EXTRACT from the PROCEEDINGS of the BOARD OF REVENUE, dated 26th October 1854.

READ the following :—

No. 1356.

EXTRACT from the MINUTES OF CONSULTATION under date the 20th October 1854.

READ the following extract from the Proceedings of the Board of Revenue.

(Here enter 21st September 1854, No. 452.)

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WITH the above extract from their Proceedings the Board of Revenue submit, as directed by Extract from the Minutes of Consultation, 27th April last, the report of the Collector of Canara on the operation of Regulation V of 1822 in his district.

Paragraphs 2 to 11.

2. Mr. F. N. Maltby states that this Regulation has for a long period been very extensively acted upon in Canara, and, he thinks, with excellent effect. He explains the several descriptions of landed tenures usually obtaining in that province, and the manner in which disputes arising between landlords and tenants are ordinarily dealt with under the Regulation. He observes, however, paragraphs 16—18, that he is led to doubt whether the question under discussion in reference to Malabar can be so properly considered as the introduction of Regulation V of 1822 into that province as the introduction of Regulations XXVIII and XXX of 1802. He is led to this remark by a note from Mr. Conolly, in which that gentleman expresses his doubt whether it would be wise to give the Zamorin power to distrain the property of Moplah tenants, when a disturbance might be created and the Magistrate not have the power of prevention. If so, Mr. Maltby submits, the question is not whether Regulation V of 1822 shall be introduced to protect the tenants under the exercise of the power of summary distraint by their landlords, but whether the power of summary distraint shall be introduced. The Board of Revenue appear to be of opinion with Mr. Strange that it is very desirable that all cases between landlord and tenant should come, in the first instance, before the Revenue authorities as those most likely to bring the dispute to a satisfactory settle-

ment. Upon this point Mr. Maltby has no hesitation in stating his opinion that his district affords evidence of the advantages of such a system. But if the question is whether in the present state of Malabar a power of summary distraint which has not hitherto been exercised shall be now introduced, modified by Regulation V of 1822, he does not think that his district affords an example applicable to the case; for although the tenures in Canara are complicated, the province is free from the hostility between rival classes which appears to exist in Malabar. Regulations XXVIII and XXX of 1802 were, he continues, framed to meet circumstances different from those of either Malabar or Canara, and the modifications by V of 1822 are so obscure that a re-enactment of that Regulation was pronounced to be necessary almost as soon as it was published. It is only by considerable deviations from the letter of the law that they are made applicable to unsettled districts. He therefore suggests whether a new enactment requiring that preliminary notice of ejectment or distraint should be given to the Collector, and otherwise consolidating and improving the law of landlord and tenant, would not be more likely to meet the necessities of the case than the introduction of the existing law.

3. On this suggestion of Mr. Maltby the Board of Revenue remark, paragraph 7, "Putting aside the question of the power of Government to enforce the law in the district of Malabar, which it is not the Board's province to discuss, they do not see that any new law is necessary in substitution of Regulation V of 1822, which for all practical purposes enables the Revenue authorities to cope with any question of rent which may come before them. The notice of distraint is already obligatory under the present law, nor can the property seized be sold or the under-tenants ejected without the permission of the Collector. The Regulation is one pre-eminently in favor of the tenant, and therefore should be especially useful in Malabar, where the tenant, as Mr. Conolly declares, requires protection from a landlord usually harsh and exacting."

4. It appears to the Right Honorable the Governor in Council that these remarks do not meet the question raised by Mr. Maltby, viz., whether in the present state of feeling in Malabar, and the relation there obtaining between landlord and tenant, it is expedient to confer upon the former the power of distraint under Regulation XXVIII of 1802, tempered though it be by the protection afforded to the tenant by Regulation V of 1822.

5. In the report of the Commissioner for the investigation into the Moplah outbreaks in Malabar, 25th September 1852, paragraph 72, Mr. Strange while advocating the introduction of the Regulation into Malabar, after stating that it had long been in operation in the adjoining district of Canara, where private property exists in land as in Malabar, and that the present Collector considered that it worked beneficially, adds, "the people to whom I have extensively appealed, have hailed with pleasure the proposition to introduce such a system as I have above propounded," *i.e.*, the adjustment of disputes between landlord and tenant by the Revenue authorities according to the provisions of Regulation V of 1822, "and herein Moplahs and Hindus were without an exception of one accord."

6. It has been correctly stated by Mr. Maltby that the matter now at issue is not simply whether or not Regulation V of 1822 shall be introduced into Malabar, but whether the powers of summary distraint and ejectment conferred by Regulations XXVIII and XXX of 1802, qualified by the provisions of Regulation V of 1822, shall be simultaneously called into action in that province. Before, therefore, finally disposing of the question now before him, the Right Honorable the Governor in Council resolves to call upon the Collector of Malabar to report to Government through the Board of Revenue on this special point, viz., whether the Moplah tenant clearly understands that the right of distraint and ejectment, subject to the interference and control of the Collector, is to be vested in his landlord and has no objection to such power being exercised, provided that it is limited and controlled by provisions such as those in Regulation V of 1822, and that it removes therefore disputes between his landlord and himself from the Court to the Collector. The Board will desire Mr. Conolly to communicate freely with tenants of every description in his district, both personally and through his European subordinates, to explain to them the full scope and working of the three Regulations XXVIII and XXX of 1802 and V of 1822 taken conjointly,

and to ascertain and report their feelings and wishes in respect to the adoption of these Regulations in Malabar.

(True Extract.)

(Signed) T. PYCROFT,
*Secretary to Government.*

Ordered that a copy of the above Minutes of Consultation, together with the papers noted in the margin, be communicated to the Collector of Malabar, with a request that he will carry out the orders of Government contained in paragraph 6, and report the result for the information of the Board.

From Canara, 19th July 1854. Board's Proceedings, 21st September 1854.

2. A copy of the Board's Proceedings of 21st September 1854 having already been communicated to the Collector of Canara, the Board resolve to furnish him with a copy of the above Minutes of Consultation for his information.

(True Extract and Copy.)

(Signed) B. CUNLIFFE,
*Sub-Secretary in charge.*

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No. 13(*a*).

From T. J. Knox, Esq., Sub-Collector of Malabar, to H. V. Conolly, Esq., Collector of Malabar, dated Pálghat, 12th February 1855, No. 41.

I conclude from your letter of the 8th instant you wish me to offer any remarks that I may have regarding the proposal to introduce Regulation V of 1822 into this district as contained in the Proceedings of the Board of Revenue dated 26th October 1854. I would have done this before had not the omission of the usual words "for report" in the true copy you sent me led me to believe my opinion was not wanted.

Since I received these Proceedings I have completed the annual settlement in two taluks whose inhabitants bear much resemblance to Tamulians, and at every station where puttahs were distributed I asked those who surrounded me their opinion and endeavored to explain the difference that the proposed change would make to landlord and tenant. The general opinion was in favor of the change, though some admitted the landlords were too full of dishonesty and cunning to be allowed any powers, and some, though they wished for the change among themselves, were not prepared to say it was desirable in taluks where the different interests of landlords and tenants were affected by different creeds. My Serishtadar, an old and experienced officer, is decidedly in favor of the introduction proposed as regards the sub-division, but he does not advocate it for the late sub-division, where he declares the Moplah tenants would be quickly enraged by the ill-use their landlords would make of any summary power.

It appears to me objectionable to evade the additional amount of labor Regulation V of 1822 would throw on the Collector, as is done in Canara by allowing the Tahsildars to make the inquiry, for I believe every investigation under Regulation V of 1822 must be made by the Collector personally or is illegal, but I would point to our already over-burthened officers, and submit that with the present number of officers who would be employed under this Regulation the summary decision intended to afford an immediate remedy would soon be as slow to reach as the decision of the Civil Court at present is.

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No. 13(*b*).

From C. Collett, Esq., Sub-Collector of Malabar, to H. V. Conolly, Esq., Collector of Malabar, dated Kotakal, 10th May 1855.

I have now the honor to reply to the Extract of Minutes of Consultation under date 20th October 1854 (forwarded to me when Special Assistant in charge of the Ernád and Walawanád Taluks), directing that the purport of Regulation V of 1822 and the Regulations connected therewith be communicated to the tenants and the result reported. I should have replied at an earlier date to this requisition had I not from mistake supposed that I was not myself required to make a report on the subject.

2. The tenants in Ernád and Walawanád with whom I communicated appear to be greatly divided in opinion as to the probable advantages of enforcing these Regulations, but all seemed to agree that something more than those laws was required to reach the real source of the disputes between landlords and tenants. I should also state that I communicated with many landlords, whose opinion was, as might be expected, in favor of the introduction of the system.

3. The observation by the late Special Commissioner that his proposition received general assent is certainly quite correct, but the chief ground for its having been so popular was an impression which, from my recollection of what occurred at the time, I feel pretty sure was general, that the Collector would have power to decide on the right of the janmi (landlord) to eject a Kânam tenant (mortgagee), and to effectually prevent his doing so when he had no right, as also to put a stop to the practice of granting a Mêlkânam (superior mortgage claim) to another shortly after the granting or renewal of the Kânam (mortgage) to the tenant in possession. That this idea was prevalent I had a proof in the tenants on the present occasion not unfrequently expressing their approval till I explained to them that the Collector's decision as to the payment of the rent did not prevent the janmi from primarily resorting to the Civil Court, and that after a Collector's decision on the minor question there was an immediate appeal by a regular suit in which the Courts might pay what regard they thought fit to the Collector's opinion on the question between the parties, and that a Collector could not give any redress to a Kânam tenant applying to him when the janmi brought a civil suit for ejectment within twelve years after the granting of the Kânam, or when the janmi sought to eject him in favor of another to whom he had granted a Mêlkânam.

4. The one advantage from the enforcement of the Regulations which appeared at once to strike all Kânam tenants was that a janmi could not then, as now, with a view to creating a plea for bringing a suit to eject a Kânam tenant, refuse for three or four years to receive his rent, and then assert that the tenant neglected to pay. This I am well assured is a most common practice with janmis, and all tenants, both Hindu and Moplah, at once alluded to it, and I was frequently asked whether a tenant might at once apply to the Collector and compel his landlord to receive his rent, the poorer tenants explaining that the hardship was that when such suits were brought they were really not prepared to pay several years' rent at once; that in fact few could husband up and eventually pay a sum which they could have managed to have done had the rent been received from them regularly at short intervals. To the richer tenants also this appeared an object, as the delay is equally an inconvenience, though a less vital one to them, while the interval affords abundant opportunity for the fabrication of, and giving an appearance of age to, false documents. The Regulations in question do not appear to provide for such a contingency, though the Civil Courts would of course, after their introduction, never receive the alleged plea of refusal on the part of the tenant to pay rent. Still the right of the janmi to resort in the first instance to the Civil Courts is so clear that a new enactment would probably be required to enable a Civil Court to compel him to resort to the Collector.

5. Many, and, I think, the majority of tenants considered the advantage of depriving the janmis of the present common plea for ejectment so great that they would be glad to see the law contained in these Regulations enforced, provided that the Civil Courts were at the same time compelled by definite and strict orders to respect the rights of Kânam tenants, at once rejecting any suit in which the Kânam had been

granted or renewed within the last twelve years, and also refusing to recognise any Mêlkânam granted to another within the same period, or after it, without a previous reference to the original Kânakkâran. These two latter practices they as well as those opposed to the measure considered to be the real source of contention between themselves and their landlords.

6. Those, however, who were opposed to the introduction of the proposed measure alleged that unless a summary decision on the main question—that of ejectment—was also placed in the hands of the Collector and they had the benefit of something of more value than his opinion, which a Civil Court need not, and in fact by law could not, act upon, they would only be still more exposed to the whims of their landlord. Admitting the advantage put forward by the other party, they yet thought the measure gave a power to the janmi which might be abused in the case of the poor tenants both by the janmis and their agents; the latter especially they feared would make a threat of distraint and attachment of property a plea for extortion, and where irregularities did occur, still the loss and inconvenience they must suffer and the difficulty they would have, even in a Collector's office, in establishing their case against a clever and influential janmi would be very great. I explained that to make a Collector's decision on a question of ejectment a bar to a civil suit on the same point would be impracticable, as it must be in effect to transfer the whole civil business to the Collector. The chief opponents of the measure were, I think, the poorer tenants, the rich no doubt feeling that they could hold their own in a Civil Court against a janmi, provided the Courts were compelled to respect their rights.

7. To the remarks contained in the latter part of paragraph 10 of Mr. Maltby's report it seems to me a pertinent reply on the part of the poorer tenants that already they enjoy the advantage of being maintained by the Magistrates in their occupancy as tenants, while the landlord is referred to "the more expensive and difficult process of a civil suit;" that under the new measure they would be no better off, and the opinion of the Collector as to the real nature of the demand would be of no value to them unless the Civil Courts were guided by it; while it seemed to be entirely forgotten that if "a regular suit is an expensive and difficult process" to their landlord, it is incomparably more so to them to have to defend one, the Civil Court being the very place where they have least chance against their landlords and which they very well know.

8. One-sided in part as this view may seem, I fear that in practice it contains a great deal of truth. Often when explaining to a poor tenant how the law was on his side, I have been met by the objection that it might be so, but he had no chance in a Civil Court; his landlord had suits there always, while he was never in a Court in his life; and, unlike his landlord, he had neither money nor experience wherewith to maintain his rights. Somewhat in corroboration of this view is the fact that when the Sadr Amins at Calicut were allowed to file suits below Rs. 1,000 their files were crowded with cases cognizable by the District Munsifs, and which it is impossible to suppose were chiefly brought before the Sadr Amins from the greater convenience of these Courts, but rather, as it has been explained to me, because the distance gave an extra chance to the rich plaintiff that his poor defendant would not be able to defend his rights so far away from his home.

9. All tenants were unanimous that the attachment should not be made direct by the janmi, but by the Adhigâri and Mukhyastans (headmen) on his application. The janmis also stated to me that they would themselves much prefer this method, and I certainly agree with them that this change in the procedure will be very desirable and will tend greatly to prevent quarrels which would otherwise be very likely. While, too, it would be throwing no obstacle in the way of the janmi, it might at the same time be made a means for protecting poor tenants against a vexatious and unjust attachment.

10. There appears to be great difficulty in applying to Malabar Regulation XXX of 1802 or Section VIII of Regulation V of 1822, which constitute the chief protection to the tenants. To allow of any interference by the Collector as to the terms of agreement between tenant and landlord would be a great injury to the janmis, and yet it is in these provisions, I conceive, that the tenant finds his chief support from the Collector. There is though, it has appeared to me, one method in which these

provisions might be brought into partial use with equal advantage to landlords and tenants. When a janmi conceives he has a right to call upon his tenant to renew his deed, or to raise the rent or pâṭṭam on a garden granted on a quit-rent for the sake of improvements, and yet has no wish to eject his tenant, it would, I think, be practicable under these Regulations for the janmi to apply to the Collector, and the Collector to compel the tenant to renew his deed or raise the rent, the amount fixed being such as appeared just to the Collector and which the janmi would, after making this application, be compelled to accept.

11. I have known instances in which the janmi has lost his influence and power, or in which, from negligence or incapacity in the head of the family, gardens long ago granted on Kânam, when waste, have been fully cultivated and yet continue to pay a merely nominal rent of perhaps a fanam a year. In the same manner the renewal of deeds is resisted by the tenants when they are aware that their janmi is a poor or incapable man who has little power of adopting the process of a civil suit to enforce his rights. On the other side the instances are no less frequent in which a janmi compels a tenant who has recovered a waste land to pay him an amount as Kânam or raise the amount of his previous deed as soon as ever the land is brought into cultivation and before the tenant has recovered his outlay. With regard to gardens in which the tenant has to wait a still longer time before he begins to gather the produce this species of injustice is still more frequent. Though the ancient customs of the country are, I believe, definite on this point, I am not sure that they are always duly regarded by the Civil Courts; while at best the rates allowed for improvements have become, since the great rise in the value of garden produce, utterly inadequate and almost nominal. Yet often injustice is put up with because the tenant is most frequently a poor man whose outlay has consisted in the labor of himself and his family.

12. Though even if the Collector could interfere in such cases the janmi would often resort to the Civil Courts, yet still the Collector would have the opportunity of declaring his estimate of the value of the improvements, and as the Civil Courts, and especially those presided over by Europeans,* are greatly at the mercy of that unscrupulous race—Court Amins—this would often enable them to do justice to a poor man. I have known a poor man's improvements to have been valued and decreed at less than one-third of their value, as I judged after a careful inspection. The Collector and Tahsildar are too, of course, far better qualified to pronounce on the real value of improvements than a distant Court quite unacquainted with the locality. I therefore think that if the Regulations be enforced as proposed, the Collector should be competent to receive and decide upon applications regarding the above matter from both landlords and tenants.

* Munsifs may themselves view the property, a step generally impracticable for European Judges to adopt.

13. Among the native public servants I think the general opinion was unfavorable as to the practical advantages of the Regulations. The Hindu Tahsildar of Walawanád was altogether opposed to them as not meeting the difficulty. The Moplah Tahsildar of Ernád was at first disposed to view the measure favorably, but after discussing the matter with the people he also expressed an opinion that it would be a measure productive of no practical benefit and liable to abuse.

14. If I may be allowed to express my own opinion, I should say on a full consideration of the Regulations that they could not be applied to Malabar without a violent departure from the letter of the law or extensive interference with private rights, and especially those of the janmis, while the real difficulty—the final determination of questions of ejectment of substantial tenants—would not be reached. The remedy, it seems to me, lies with, as the evil has arisen from, the Civil Courts. The case of the Kollattûr Vâriyâr and his tenants, I would beg leave to submit, is simply an example of the real difficulty and a proof of how it has arisen and how it can alone be met. Here is a landlord, simply from a motive of revenge, seeking to eject *en masse* his substantial tenants. That janmi has, I conceive, no right to ask to eject his Kânam tenants on simply returning the amount of their Kânam, unless he can prove default on their part. As to the far greater majority of those tenants he would be unable, I feel quite sure, to prove such default as, according to the old Kânam-Janmam Maryâda (Rules regarding land tenures in Malabar) or custom of landlord and tenant, would entitle him to oust them. So that the Civil Court, which has to decide those cases,

may, I humbly submit, legally prevent this janmi from perpetrating that injustice which so much persuasion has been used in vain to induce him to abstain from. But such suits, I may I think justly add, would never have been brought forward had not the Civil Courts encouraged them by habitually allowing a janmi to eject his substantial tenants, whenever he may fancy it, in violation of those rules which have been expressly and wisely framed to encourage and secure improving tenants. I am aware that in accordance with the Proceedings of the Sadr Adâlat under date the 13th February 1854 recent instructions have been issued to the District Munsifs to pay regard to the ancient customs on this point. The evil has been one of long growth, and the constant practice has been so directly opposed to those customs that very precise directions might with advantage be issued, but under the careful supervision of the superior Courts this great and hitherto growing difficulty may yet be overcome.

15. A very plausible objection has been urged, viz., that the Regulations proposed to be introduced have hitherto inequitably been used only against the landlords by maintaining the tenants in occupancy and yet referring the landlord to the Civil Courts to recover his rent. Besides the answer that the tenant has been thus maintained in his occupancy not by the Collector but by the Magistrate, I would beg leave to point out that the objection loses all its force when it is remembered that the very nature of the Kânam is that it is an advance of rent to secure the janmi against default in his tenant, and he has a right to strike off an equal amount from the Kânam when the rent is withheld. It is supposed that originally the amount of the Kânam was equal only to one year's rent, and, as may be seen from the wording of the deeds, this is to the present day still frequently the case. If, too, the referring the janmi to the Civil Courts is a denial of justice, the fault is with those Courts, as it is the practice in Malabar for the Courts to refuse to receive suits for rent only. The suits must be brought for ejectment also. I am not prepared to say how far this practice is in accordance with the law. The reason which has been assigned to me by such Munsifs as I have conversed with on the point is that the suits would be admitted on too low a stamp, but I should conceive that it would be very practicable to decide suits on the question of rent without the title to the land being considered to be affected thereby. If so, looking to the delay which it would appear from the return of cases before the Collector of Canara must occur even under the Regulations proposed, I should suppose the landlords might have as effectual and speedy a remedy in the Civil Courts as from the Revenue authorities.

16. If I might be allowed I would with much deference briefly point to what would, I think, be practical remedies.

1*st.*—The "Kânam-Janmam Maryâda" is an unwritten law, but its main principles are well known to the people and might be easily ascertained and recorded. A committee of three or four experienced natives from the Revenue and Judicial Departments, presided over perhaps by an European official, might readily in the course of three or four months proceed through Malabar and ascertain and record the recognised rights of landlords and tenants. In minor details the same nominal species of tenure might be found to differ slightly in different parts of the province. Some species of tenure will also be found prevalent in one portion of the province and not in an another. The advantage of having such a recorded standard to guide the Civil Courts in their judgments would be very great, and might, I think, be secured without either much labor or expense.

2*ndly.*—The compulsory registration of all deeds relating to land might be introduced. The greatest facilities should be offered for this being done with as little cost and labor as possible. With this view the different Revenue authorities, heads of villages, detached Taluk subordinates, Tahsildars, the Collector and his European Assistants might register the deeds according to their value. The fee should be sufficient only to pay the actual expenses of registration and the deeds might be allowed to be on plain leaf or paper, the usual fine being of course paid when they are used as exhibits in a Civil Court. The registers should be periodically deposited in the Zillah Courts.

I have no authentic information, but have been told by natives from Mahé that a very efficient system of registration, extending even to simple bonds, has been enforced by the French. So far as I could ascertain, the measure I have now suggested would be readily received by the people.

*3rdly.*—The legality of the Civil Courts deciding cases for recovery of rent alone, without ejectment, might be determined.

*4thly.*—Improvements should be assessed by the Civil Courts in accordance with their real value and not at rates which are merely nominal.

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## No. 13(*c*).

From H. V. Conolly, Esq., Collector of Malabar, to B. Cunliffe, Esq., Secretary to the Board of Revenue, Fort St. George, dated Calicut, 9th June 1855, No. 61.

26th October 1854.

I was ordered in the Proceedings noted in the margin to inquire from the tenants of Malabar, and especially the Moplah tenants, how far they would approve of landlords being armed with the power of distraint and ejectment, provided it is limited and controlled by provisions such as those in Regulation V of 1822.

Note.—My Sub-Collector's report is another appendix. My Head Assistant had not sent in any statement previous to his death.

2. Some delay has occurred in replying to this call. The tenants were more easily met at the time of jamabandy and Mr. Collett, whose opinion was of peculiar importance as having served so long in the Moplah districts, did not, from some misapprehension, send in his report till lately. It now forms an appendix to this paper.

3. Mr. Collett, it will be seen, has arrived at the conclusion that the tenants, and especially the poorer tenants, will not be pleased to have the power of distraint given to their landlord unless they receive at the same time some compensating benefits in excess of what are provided for in Regulation V of 1822, and I think from the result of my own inquiry that Mr. Collett's view is correct.

4. The power of the landlord in distraining and ejecting tenants is thought by the lower orders to be already frequently abused, although much checked by the necessity of having recourse to the process of a civil action. Any additional power would be to their disadvantage. The landlord, they hold, will have a new weapon put into his hands. He may, in the first instance, come down on the tenant through the Collector, and if he fail there resort as at present to the Judge. They think this double remedy should be barred.

Minutes of Consultation, No. 483, dated 23rd August 1853, and Board's Proceedings, dated 5th September 1853.
To Board of Revenue, dated 30th September 1853.
To Secretary to Government, No. 34, dated 8th October 1853.
Extract from the Proceedings of the Board of Revenue, dated 20th March 1854.

5. The question of introducing the power of distraint in Malabar must be argued, I imagine, on its general merits and without reference to the wishes of any particular party. So much has been written about it in the papers noted in the margin that it is unnecessary to go over the ground again.

6. A good deal may evidently be said on both sides. The introduction of the Regulation under which distraint is authorised may be beneficial here, as it is said to have been in Canara, but it may not.

7. There is a difference, as is well known, between the two provinces. In Canara the landlord and tenant are both Hindu. In Malabar, while the landlord is generally Hindu, the tenant is frequently Moplah. In Canara the landlord and tenant are more or less on social equality. In Malabar the landlord is frequently a man of rank or caste far superior to his tenant. In Malabar then, to the animosity induced by private interests, you have added the animosity of religious distinction and of bigoted pride. The high caste Hindu landlord frequently

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looks down with contempt on his Moplah tenant, whom he considers of a degraded caste, and has no particular consideration for his feelings.

8. I by no means wish to make a general charge against the Hindu landlords. Many of them act honestly and fairly towards their tenants—Hindu or Moplah—but there are undoubtedly (as is natural to suppose) many exceptions. The case of the Kollattûr Vâriyâr who proposes to eject 173 Moplah tenants, as fully reported in my letter of the 5th February last, is not altogether a solitary one. In a case which occurred not very long ago some 30 Moplah tenants were ousted by a great (absentee) landlord in a very harsh manner. I shamed him into reinstating them.

9. I see some risk in giving extra power to individuals who are liable to abuse what they already possess. I fear the landlord who lives in secure distance himself harrying his poor tenants by means of an unscrupulous bailiff.

10. The object of Government in introducing the distraint system is not that for which the distraint Regulation was originally designed, *i.e.*, the security of the Government revenue. That is already sufficiently provided for in Malabar. The tenant, as a general rule, pays the Government tax, a portion of the produce being especially reserved for it.

11. It is for the benefit of the landlord and tenant jointly that this measure is now under agitation. I still doubt, as I have all along doubted, whether this object may not be better gained by leaving the matter to the Civil Courts, as at present, than by transferring it to the Collectors.

12. In Bengal I observe that Mr. Welly Jackson, the Special Commissioner, strongly recommends that suits of this nature be *withdrawn* from the Collector and made over to the Civil Courts. The decision of summary suits between landlord and tenant is not (Mr. Jackson argues) properly the province of the Collector, but of the Civil Courts.

Paragraph 15, General Report, No. 16, page 5.

"The decision of summary suits between landlord and tenant is not properly the province of the Collector, but of the Civil Courts; the Collector has the power of a Civil Court given to him for this purpose, but the Sudder station is so far from the parties that it is most desirable to alter the practice to bring justice nearer the people and to leave this duty to the Munsifs. It was thought that the Collectors, as revenue officers, would decide these cases better, but they are generally made over to some Assistant or Deputy who is scarcely equal to a good Munsif as a judicial officer and has none of the advantages of local knowledge. It was supposed that the Collector would know better than the regular Courts who was entitled to receive rent and the nature of the tenures in different parts of his district, but this I think is not the case; the Munsifs have more knowledge on these subjects, certainly more than the Assistants and Deputies. There is no reason why the Munsifs should not try these cases in the same summary manner as the fiscal officers."

These remarks appear to me to be practical and deserving of attention.

13. It is perfectly clear from Mr. Maltby's letter of the 19th July 1854 that one of the great objects hoped for in transferring suits from one authority to another—*i.e.*, speed—is not attained in Canara. At the end of the year 1853 Mr. Maltby had 1,974 in arrears, although he had more European aid of experience than I have. I feel certain my cases are not lighter than his, and that I cannot reasonably look therefore for better results.

16. But however this point be determined, there is no hope of full satisfaction without some improvement in the procedure existing at present in Malabar.

17. The spirit of the ancient laws of the country respecting ejectment of tenants should be more enforced. The Sadr Adâlat have lately issued instructions which may tend to this, but the matter must not be lost sight of.

NOTE.—By the spirit of the laws no tenant holding land on mortgage (Kânakkâr) should be ousted for 12 years. Should more mortgage money be offered by another party, the first mortgagee should have the "refusal" of retaining the ground on the advanced terms.
The omission to attend to this rule (and it is a frequent omission when a landlord wishes to oust his tenant who has from any cause become obnoxious to him) leads to worse feeling than almost any other grievance.

18. The rates of compensation allowed for tenant improvements (Kulikkânam) should be modified and increased so as to meet the altered value of property. I urged this in my memorandum of the 30th March 1852, but the Sadr, to whom it was referred, doubted the propriety of interfering authoritatively.

To the late Commissioner, Mr. Strange.

19. The present rule is a crying evil, and one which produces much bad blood. It is a mockery to adjudge 10 rupees for improvements worth 30 in consequence of some old rule which has become inapplicable from the effects of time.

20. It may be said that the tenant should have made himself acquainted with the old rule ere making the improvement, but it is difficult to make a low and ignorant peasant comprehend a distant contingency. He takes a piece of waste land under the idea he will make a home, and after laboring for years till he has converted it into a property of some value, finds that from some chance cause he is ejected and adjudged a sum in compensation which, though legal, is utterly unremunerative.

21. If the law is rectified in these matters and if, as recommended so frequently, an easy plan of registration be introduced, I think matters will go on smoothly enough as regards land questions under the present system.

22. The Munsif of Ernád, on whom much depends as regards adjudication between Hindus and Moplahs, should, I think, always be a party independent of both creeds, in other words a Christian. This has been the case at my recommendation since 1852.

The Munsifship should be made a first-class one (it can be arranged by exchange without expense) in view to securing the service of a fit man. The present Munsif, Mr. Stuart, is a very good public officer. He would, I think, be content to remain for some time if his position were raised as I recommend. I annex some remarks which he drew up on the question at issue which are sensible.

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## No. 13(*d*).

On the Proposal to invest Landholders in Malabar with the power to distrain and sell the Personal Property of Tenants for Arrears of Rent under the provisions of Regulation XXVIII of 1802.

I HAVE looked at this subject from every point of view, and I am of opinion that in the first place no necessity whatever exists for the extension of the provisions of the above Regulation to the district of Malabar, and in the next that no beneficial results are likely to accrue from the measure.

The object sought to be obtained by the enactment of the Regulation was, as is plainly set forth in the preamble, to secure the punctual collection of the public revenue, and to this end to give landholders the "means of compelling payment from defaulters without being obliged to have recourse to the Courts of judicature and incurring the delay necessarily attending a law process."

The Regulation therefore would appear to have been framed expressly to meet the exigencies of those districts only wherein the zemindari system of land tenure obtains. In such districts the Zemindar is held liable for the gross amount of assessment levied on the whole of his estate, and it is therefore clear that he cannot be punctual in the payment of it while his tenants fail to discharge their rents when due; but in the district of Malabar the case is different. There the assessment is invariably collected from the party in occupation; indeed one of the conditions of the agreement entered into between landlord and tenant on the assessment of lands, whether it be on verumpâṭṭam or kânam tenure, is that the latter should pay the Government assessment, and for this purpose a portion of the produce is left in his hands, so that as far as the interests of the Government are concerned there seems to be no necessity for the proposed measure.

If the interest of the landlord is contemplated, the delay attending a law process is easily obviated by the Courts proceeding with the investigation of suits for the recovery of arrears of rent as soon as they are laid without observing the order of the file, and this may be done without infringement of any Regulation or Circular Order if the Courts would entertain suits in the cases of substantial tenants, or even in the case of simple tenants, if the lease has not expired, only for the recovery of arrears of rent and not require the parties to bring the action for the restoration of the land also (as is

the practice in all the Courts of Original Jurisdiction in this zillah, which has arisen, in my opinion, from an erroneous construction of the Regulation), for then the majority of such suits would come under the head of unappealable suits, that is suits below Rs. 20, and these suits, by a recent Circular Order of the Sadr Court, are required to be brought to a hearing immediately and disposed of in a summary manner, so that from the date of the institution of the suit to that of its final disposal more than *two months* need not intervene; and in order to secure the execution of the decree in case of verumpâttam tenancies the Courts might, as soon as the suit is filed, attach the crops, &c., and hold them under attachment till the decree is satisfied.

In suits of the above nature, when the amount recoverable exceeds Rs. 20, the Courts on application might obtain the permission of the higher Court to bring them to a hearing out of the order of the file, so that no delay need occur even in the disposal of such suits.

I do not see how the delay that attends a law process will be obviated by giving landlords the power of recovering arrears of rent from their defaulting tenants, for property attached under the Regulation in question cannot be sold before the expiration of thirty days from the day on which notice of the attachment shall have been given to the Collector, and I feel confident that in every case the tenant will deny the right of the landlord to the rent due. It will become necessary then that this point be first investigated into and determined before the order for the sale of the property be given. Some delay in consequence must occur.

Further, in cases wherein the land is taken on a lease for one year or for any specific period—and such tenures form the majority—although the landlord should recover his rent through the Collector, yet in the event of the tenant refusing to surrender the land he will be obliged to have recourse to law, unless it is intended to give the Collector the power also to eject a tenant on the expiration of his lease.

Lastly it will be necessary to apply the Regulation only to cases of simple tenancies, for in the cases of substantial tenancies the Kânam (which in cases wherein the assignment has been made in accordance with the Kânam and janmam customs of the country is equivalent to the value of twelve years' rent) is security for the rent, and cases of the latter nature are comparatively very few.

For the abovementioned reasons I repeat that in my humble opinion no necessity exists for the proposed measure, and consequently no benefits can be expected to result from it.

14*th March* 1855. (Signed) W. STUART.

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## No. 14.

PROCEEDINGS of the BOARD OF REVENUE, dated 22nd December 1855, No. 3426.

READ letter from the Collector of Malabar, dated 9th June 1855, No. 61, regarding the introduction of Regulation V of 1822 into that district.

READ again Proceedings of Madras Government, dated 20th October 1854, on the same subject.

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THIS question has been discussed at some length in the correspondence noted in the margin, which arose out of a suggestion made by the Special Commissioner in Malabar that Regulation V of 1822 should be acted upon in that province as it is in Canara.

F. Government, 23rd Aug., in C., 5th September 1853.
P. to Malabar 5thSept. 1853.
F. Malabar, 30th Sept. 1853, in C., 20th March 1854.
P. to Government, 20th March 1854.
F. Government, 27th April, in C., 1st June 1854.
F. Government, 20th, in C., 26th October 1854.
P. to Malabar, 26th Oct. 1854.
19th July 1854, in C., 21st September 1854.

2. The Government, in their minute above alluded to, concurred in the opinion expressed by the Collector of Canara in his letter then before them to the effect that the question was not whether an existing law of summary distraint should be modified by the provisions of Regulation V of 1822, but whether such a power should or should not be introduced into a district where it has not hitherto been exercised.

3. Mr. Strange had represented in his report that the people of Malabar were, as far as he had consulted them, universally favorable to the introduction of the Regulation V. It was however determined by the Government to refer to the Collector for special information on this point, and his reply is now before the Board. Enclosed with this letter are reports from Messrs. Collett and Knox and a memorandum by Mr. Stuart, Munsif of Ernád. Mr. Conolly attached great weight to the opinion expressed by Mr. Collett, owing to the experience which he had acquired of the customs and feelings of the Moplah tenantry. It appears from Mr. Collett's account that the opinion which the people had expressed to Mr. Strange in favor of the new Regulation was founded on the idea that the decision of the Collector in cases brought before him under this Regulation would be final, and that his interference would effectually protect a tenant from unjust ejectment by his landlord. On learning that the Collector's decision was liable to be set aside in an appeal to the Court, the greater number expressed themselves averse to the proposed change. It further appears from Mr. Collett's statement that the causes tried between landlord and tenant in Malabar are of a peculiar nature, every suit being for ejectment as well as for arrears of rent; this is said to arise partly from the refusal of the Courts to entertain suits simply for rent.

E.M.C., 20th October, in C., 26th October.

10th May 1855.
12th February 1855.
14th March 1855.

Paragraph 15.

5. Mr. Conolly has pointed out the nature of the hardships to which tenants are chiefly exposed, and that they arise from the neglect of two fundamental rules universally recognised as belonging to the Malabar system of tenure: the first is that a tenant on Kânam or mortgage (which is the prevailing form) should be permitted an occupancy of twelve years in order to permit him to recover his outlay, and that in the event of a more advantageous offer being made to his landlord or janmi in the interim he should be allowed a preference on offering a similar amount.

6. The second important rule was that the tenant's improvements should be fairly estimated and their value made up to him when he relinquished the land. In practice the Courts have not applied these rules; tenants have been ousted without reference to the period of occupation, and their improvements paid for on very inadequate estimation. From this state of the law has arisen much of the ill-blood existing between Hindu landlords and their Moplah tenants, who have been turned out of possessions which they had acquired under the idea of permanent occupation. The Sadr Court have lately directed that the District Courts shall, in deciding these cases, pay regard to the rules above explained. A strict adherence to these instructions would do much to ameliorate the position of the Moplah tenantry, and it appears to the Board to be desirable that rules of tenure so marked in their character and so closely cherished by the population of Malabar should possess the force of law, and that this law should be universally known and acted upon.

Proceedings of the Sadr Adâlat, dated 13th Feb. 1854 (*vide* Enclosure No. 1 in No. 1677 of 1855), p. 14.

7. The law of distraint for the Presidency generally is at present under revision, and the Board have already brought the correspondence now under their consideration to the notice of Mr. Stokes. The Board conclude that it will be the desire of Government that in this revision the law of distraint shall be so framed as to be of general application throughout the Presidency, and the peculiar circumstances of Malabar will be duly considered when the revised Code comes under discussion. The Board conclude that the Government will not desire at the present moment to pass any order affecting the practice that has hitherto prevailed in the province of Malabar, and as Regulation V of 1822 will shortly disappear from the Code it seems unnecessary to continue the discussion of its application to that province.

8. But in the meanwhile the Board would observe that it appears to them to be shown that a great amount of evil and suffering in Malabar has arisen, as stated by the late Mr. Conolly, from erroneous decisions by the Courts of law, and the province appears to be pre-eminently in that condition which proverbially results when rights are vague and uncertain. The Board feel that to discuss forms of present use for enforcing the law is almost useless until the law is authoritatively determined. The great point therefore is to define the ancient law of the country in such a clear and consistent form as may serve as a guide to the judicial tribunals of the district.

9. Mr. Conolly observes: "The spirit of the ancient laws of the country respecting the ejectment of tenants should be more enforced. The Sadr Adâlat have lately issued instructions which may tend to this, but the matter must not be lost sight of."

Paragraph 17.

10. The instructions of the Sadr Court are not before the Board, but they presume that from them and a collection of the soundest decrees of the Courts of the province the *lex loci* as respects landlord and tenant may be determined. In this case any legislative enactment for the province would, the Board presume, be unnecessary, as it is the office of the Courts to uphold the law of the districts in which they are placed. But it would, in the Board's opinion, be highly advantageous both for the guidance of the judicial officers of the province and the information of the inhabitants that the precedents which declare the law should be compiled in a convenient form and extensively circulated.

(True Extract.)

(Signed) G. S. FORBES,
*Acting Secretary.*

(True Copy.)

(Signed) E. GIBSON,
*Acting Secretary.*

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## No. 15.

Extract from the Minutes of Consultation under date the 21st January 1856.

Read the following extract from the Proceedings of the Board of Revenue.

(Here enter 22nd December 1855, No. 3426.)

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In these Proceedings the Board of Revenue report further on the result of the correspondence between themselves and the local officers on the reference made to them by Government (Extract Minutes of Consultation, August 23rd, 1853) respecting the expediency of taking measures to introduce the use of Regulation V of 1822 into Malabar.

2. The object of the second reference to the Board, under date October 20th, 1854, was to ascertain the feeling of the body of tenants on the subject; and the Board notice that on having had the purport and effect of the Regulation fully explained, the tenants generally were averse to its introduction. The Board then go on to point out from the reports of the local officers that the tenantry of the district labor under, or complain of, two chief grievances in the alleged neglect by the Courts of two fundamental rules connected with the local tenure of land. The Board express the opinion (paragraph 7) that as the law of distraint generally is now under revision, the peculiar circumstances of Malabar should be considered when the revised Code comes under discussion; and that as Regulation V of 1822 will shortly disappear from the Statute Book it is needless to continue the discussion of its application to Malabar. In a subsequent paragraph (p. 10) the Board intimate the opinion that a collection of precedents as to the local custom would be better than positive enactment on the subject.

3. The Right Honorable the Governor in Council agrees with the Board that under present circumstances it is unnecessary to pursue further the proposal to bring Regulation V of 1822 into use in Malabar. With respect to the other points noticed by the Board, it is decidedly the opinion of the Government that the questions referred to are matters for decision by the Courts rather than for legislation. The object in view is not at all to alter the law, but simply to ascertain it. Both the evils complained of depend on alleged peculiar customs, and it is one special function

of the Courts to ascertain and enforce local customs which must be pleaded and proved before them. On the other hand, if the Legislature were now to enact a law, even though only designed to be declaratory, to uphold such alleged customs, there would be much risk that in the attempt to vindicate the rights of one party injustice would be done to the other. The Act might probably unintentionally extend the custom to places or to cases wherein it was not before applicable, or might unwittingly alter its effect. There seems the less reason too for any interference of the Legislature because it appears that the alleged past neglects of the Courts are in course of being corrected for the future.

4. A collection of sound decrees might be of much value, as the Board suggest, as a guide to the local Courts as well as to the Revenue officers, and the Governor in Council requests the Board to place themselves in communication with the Court of Sadr Adâlat in view to the selection and publication of a series of such decrees.

5. Ordered that the foregoing order be communicated to the Board of Revenue, and that a copy, together with copies of the reports of the Collector and the Sub-Collector, be forwarded to the Court of Sadr Adâlat for their information.

(A True Extract.)

(Signed) J. D. BOURDILLON,
*Secretary to Government.*

(True Copy.)

(Signed) C. F. CHAMIER,
*Deputy Registrar.*

(True Copy.)

(Signed) H. WIGRAM,
*Off. District Judge.*

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## No. 16.

EXTRACT from the PROCEEDINGS of the SADR ADALAT under date the 12th February 1856.

READ Extract from the Minutes of Consultation under date the 21st January 1856.

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THE above Proceedings of Government relate to a correspondence in the Revenue Department on the subject of the mode of recovery of rent prevailing in the Malabar Zillah, and the expediency or otherwise of introducing there the provisions of Regulation V of 1822.

2. It is stated that the present practice of the Civil Courts in dealing with the mutual rights of landlord and tenant is in some cases inconsistent with the established usages of the country, while in others it adheres too much to their letter. The Government therefore agree in opinion with the Board of Revenue that a collection of sound decrees might be of much value as a guide to the local Courts as well as to the Revenue officers in adjusting such disputes, the introduction of the enactment above quoted being considered inadvisable.

3. The Court of Sadr Adâlat resolve to forward copy of the Proceedings of Government to the Civil Judges of Calicut and Tellicherry, and to request that they will transmit to this Court copies of any appeal decrees on their records in which the subject of the respective rights of landlords and tenants according to local usage is argued and defined. The Civil Judges will likewise obtain from reliable sources, whether public or private, correct information as to the customs of the country on this point and the present feelings of the people respecting them, and send in their reports at an early date.

ORDERED that extract from these Proceedings be forwarded to the Civil Judges of Calicut and Tellicherry by Precept, returnable within thirty days from and after its receipt.

(True Extract.)

(Signed) C. F. CHAMIER,
*Deputy Registrar.*

(True Copy.)

(Signed) H. WIGRAM,
*Off. District Judge.*

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No. 17.

REVENUE DEPARTMENT.

EXTRACT from the PROCEEDINGS of the BOARD OF REVENUE, dated 31st March 1856, No. 906.

READ the following :—

No. 15.

EXTRACT from a letter from the HONORABLE the COURT OF DIRECTORS, dated 19th September 1855.

Report of the Board of Revenue on measures suggested by Mr. Strange, the Commissioner for Malabar, in his review of the circumstances attending the Moplah outbreaks.

*Paragraph* 40.—We approve of the manner in which these questions have been disposed of.

41. We shall recur to the subject of the expediency of enforcing Regulation V of 1822 in the district of Malabar when we shall have received the report which has been called for from the Collector of Canara as to the working of the law in that province, merely observing in this place that no public officer is justified in refusing to exercise powers conferred upon him by a law of general application when duly called on to do so.

* * *

Resolved that paragraphs 40 and 41 of the foregoing extract from the Honorable Court's Despatch be communicated to the Collector of Malabar.

(True Extract and Copy.)

(Signed) J. D. SIM,
*Sub-Secretary.*

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No. 18.

PROCEEDINGS of the COURT OF SADR ADALAT, 5th August 1856.

READ return of the Acting Civil Judge of Calicut to the Precept of the Sadr Adâlat under date the 12th February 1856, calling for decrees and the opinions of experienced persons respecting the mutual rights of landlords and tenants.

(Here enter S.A., No. 828 of 1856.)

Read also supplementary return of the same officer to the said Precept.

(Here enter No. 965 of 1856.)

Read also return of the Acting Civil Judge of Tellicherry to a similar Precept on the same subject.

(Here enter S.A., No. 1024 of 1856.)

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The Court of Sadr Adâlat are of opinion that a clear definition of each of the prevailing tenures, with a succinct description of the conditions attending them, would prove a valuable guide to the local officers in adjudicating disputes between landlords and tenants. With this view they have prepared the accompanying statement from the information supplied in the foregoing returns, and resolve to transmit a copy to each of the Judges of Calicut and Tellicherry for their observations and for the addition of any particulars which may have been omitted. Where any of the tenures are called by other names, such names should be added to those already given. The Civil Judges are requested to give the subject immediate consideration, and, after carefully revising each section of the statement, to submit any suggestions which in their judgment would render the descriptions given more accurate and complete.

2. If any more appeal decrees calculated to illustrate this subject should be procurable, the Civil Judge of Calicut will be pleased to forward them without further delay.

3. The Court of Sadr Adâlat request that, if possible, one or two select decrees bearing on each of the tenures may be furnished, and that, where appeal decrees may be wanting, unappealed decrees of the District Munsifs may be substituted, the whole to be forwarded with the least practicable delay.

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Ordered that extract from these Proceedings be forwarded to the Acting Civil Judges of Calicut and Tellicherry by Precept, returnable within twenty days from and after its receipt.

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*The Land Tenures of Malabar, with the Conditions on which they are held and conveyed, as established either by precedent or immemorial usage.*

Verumpâttam. (Simple lease.)

This lease runs only for a single year, unless otherwise specified. At the end of the year the landlord is at liberty either to renew the lease or to let the land to another tenant, but he cannot under any circumstances disturb the tenant in his enjoyment until the year has expired. Where the lease is for a specified period, the tenant cannot be ejected during that period unless he endeavour to defraud the landlord or allow the rent to fall into arrears. In either of these cases, however, an action of ejectment will lie against the tenant.

Kuḷikkânam. (Mortgage of waste land with a view to its being planted out.)

Where no express period has been stipulated this lease is considered to run for twelve years, otherwise for such period as may have been agreed upon. At the expiration of either of these periods the landlord may either renew the lease to the same tenant, paying him the value of his improvements, which may also be invested as a mortgage, or he may satisfy all the tenant's claim upon the land for improvements, and may let the property to a new tenant. Compensation is allowed for buildings and fruit-producing trees and shrubs of every description. In the event of the tenant failing to reclaim the land, plant trees, and otherwise fulfil the conditions of the deed, he may be dispossessed by the landlord before the expiration of the period specified. The

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landlord may exercise a similar power in the event of the tenant setting up a fraudulent title to the land.

Kulikkânapâttam. (Mortgage of waste land for improvements, the tenant paying rent.)

Under this tenure the tenant binds himself to pay a stipulated rent, as well as to bring new land under culture. Failure in either of these respects, or any attempt to defraud the landlord of his title, will render the tenant liable to ejectment. If no period is named in the agreement, the lease will be considered to extend to twelve years.

Kánam Kulikkânam. (Mortgage of waste land for improvements, the landlord receiving some pecuniary consideration.)

A tenant cannot be disturbed under this tenure for twelve years or during the period, if any, stipulated, unless he attempt to set up a claim subversive of the landlord's rights. Possessing a pecuniary interest in the property, he cannot be dispossessed for neglect to improve it.

Panayam or Todu Panayam. (Simple pledge without possession.)

The land is here pledged as security for the repayment, with interest, of certain sums advanced, but the lender has no right to interfere in the management of the property. In some cases it is stipulated that, on failure on the part of the borrower to pay the interest, the lender shall be placed in possession of the land. Where such stipulation exists the lender can sustain an action for possession. In other cases he must sue for the recovery of the principal and interest of the loan, the land being liable in the event of the money not being paid.

Kánam. (Mortgage with possession, a fee being generally paid.)

If no period be specified the mortgage is considered to extend to twelve years, and always so where a fee has been paid. The mortgagee has possession, recovering the interest of the money he has advanced from the produce of the land, and paying over the net profits to the landlord. Should he fail in the last respect the amount is placed to the landlord's credit when the mortgage is paid off, allowance being made on the other side for any improvements which the mortgagee may have effected. Failure to pay over the net proceeds regularly to the landlord will not give the latter power to redeem his land before the expiration of the period stipulated, or that of twelve years, unless there be an express condition to that effect in the deed. Any attempt, however, on the part of the mortgagee to defraud the landlord and usurp the property will give the latter that power.

Mél-Kánam. (Higher mortgage.)

Should the landlord desire to raise a further sum of money on the land and the mortgagee be unwilling to advance it, he may mortgage the property to a third party, who will be entitled to possession on paying off the sum originally advanced by the first mortgagee. The latter, however, has the option of advancing the required sum and remaining in possession if he pleases. Where the land has been mortgaged for a particular period, the landlord cannot interfere until the expiration of such period. Kánam mortgages are generally renewed at the end of the period fixed, the landlord receiving a fee; but there is no obligation on either side to renew them unless the landlord and mortgagee should be mutually desirous of doing so. Where the mortgagee discovers that the landlord has acted fraudulently, involving the produce of the land, he is entitled to have the deed cancelled.

Kolu Panayam. (Mortgage of the right of cultivation.)

Under this tenure the mortgagee has only the right to cultivate the land. If no period be specified, the landlord is at liberty to pay off the mortgage whenever be pleases. This tenure prevails in the neighbourhood of Pálghat.

Kánam Puramkadam. (Loan advanced on the security of land already held on mortgage.)

This is an expedient for raising money on land already made over on Kánam. It is quite a separate transaction, sometimes taking place at the time of the mortgage, in which case it is referred to in the Kánam deed, at other times effected long after the mortgagee has come into possession. In the latter case the fact of the mortgage is alluded to in this deed, and the landlord engages to pay off both the mortgage and the loan together. The loan thus made gives the mortgagee an additional lien upon the property as security for the repayment of the loan. Where the new loan is added to the sum first advanced and a fresh mortgage bond is executed, the transaction is treated altogether according to the rules applying to Kánam mortgages.

Otti. (Usufructuary mortgage, the full value of the land being advanced.)

This tenure gives the mortgagee possession and the entire produce of the land, the landlord merely retaining the proprietary title and the power to redeem. Where no period has been stipulated the landlord may pay off the mortgage at any time. The principal alone is repayable, the mortgagee recovering the interest of his money from the produce of the land. If the landlord be desirous of raising a further sum and the Otti mortgagee refuse to advance it, the money may be received from a third party and the mortgage transferred to him, but the original mortgagee has a right to be first consulted.

Keividuga Otti. (Usufructuary mortgage with relinquishment of the power of transfer.)

The landlord in this case relinquishes the power of transferring the property to a third party, and binds himself to borrow any further sum he may require only from the mortgagee. Should the latter decline to advance the amount, the landlord may pay off the mortgage and re-assign the property to another party.

Ottikkum-puram. (Where a sum is advanced beyond the Otti amount.)

When the landlord wishes to obtain a further sum he applies to the Otti mortgagee, and on receiving it executes this deed to him, in which he binds himself to repay the amount at the same time that he pays off the mortgage. The mortgagee must always have the option of making such further advance, but if he decline the landlord may apply to a third party and assign the property to him, the latter paying off the claim of the original mortgagee.

Nîrmuthal. (Where a further sum is advanced on an Otti mortgage in addition to the Ottikkum-puram.)

When the landlord requires to borrow a still further sum on the security of land assigned to an Otti mortgagee to whom he has already executed an Ottikkum-puram deed, he is bound first to apply to such mortgagee, and, if the latter should consent to make the required advance, the landlord gives him a Nîrmuthal document, by which he makes over to him all but the right of water. Such further advance is recoverable with the amount of the original mortgage, the Otti claim being in fact merged in the Nîrmuthal deed. In this case as in that of an Ottikkum-puram transaction, if the mortgagee decline to make the advance the landlord may obtain it from a third party, who satisfies the claim of the original mortgagee and comes into possession. In any of the three cases last mentioned the landlord is at liberty at any time to pay off the mortgage and redeem his property.

Janmam Panayam. (Mortgage of the proprietary right.)

This is the last resource, short of selling the land altogether. In executing this deed the landlord relinquishes the power to redeem his land, and has nothing left him but the nominal right of proprietorship. By going through the form of casting a few drops of water from his hand he yields up all right of further interference in the land. Nor can he sell his proprietary title to any one but the mortgagee, as he has already made over to him all the rights and privileges possessed by a proprietor. The three last tenures prevail only in the neighbourhood of Calicut.

Janmam or Attipér. (Outright sale of the proprietary right.)

The purchaser, in coming into possession, is bound by all the obligations which attached to the proprietor. He cannot disturb those who may be holding the property, or any portion of it, on Kánam mortgage, but merely receives the surplus rent produce in place of the former landlord. On the other hand, he comes into all the rights and privileges of the former landlord, and may pay off Otti mortgages and sell or transfer the property as he pleases.

Peruvartham. (Usufructuary mortgage, the land being redeemable at its value in the market at the time of redemption.)

This tenure approximates closely to that of Otti, the mortgagee being in possession and enjoying the whole produce. The peculiarity of this transaction is that the sum advanced, which is always the full marketable value of the land for the time being, is not mentioned in the deed, and the landlord in redeeming his property does not repay the amount originally advanced, but the actual value of it in the market at the time of redemption. In other respects the same rules that apply to Otti mortgages are applicable to these also. Deeds of this kind are in use only at Pálghat and Temalpuram.

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*Adima or Kudima Janmam. (A permanent but inalienable right granted for favor or for performance of certain services.)*

In this case the land is made over in perpetuity to the grantee, either unconditionally as a mark of favor, or on condition of certain services being performed. The terms Adima and Kudima mean a slave or one subject to the landlord, the grant being generally made to such persons. A nominal fee of about two fanams a year is payable to the landlord to show that he still retains the proprietary title. Land bestowed as a mark of favor can never be resumed, but where it is granted as remuneration for certain services to be performed, the non-performance of such services, involving the necessity of having them discharged by others, will give the landlord power to recover the land. The non-payment of the annual fee will form no ground for ousting the grantee, but will be recoverable by action. The hereditary property of Native Princes cannot be conferred on this tenure, the ruling prince having only the right of enjoyment during life, without power to alienate.

*Anubham or Anubhavam. (Relinquishment of land for enjoyment by the tenant in perpetuity.)*

It was customary for princes, when conferring a title on any person, to grant him at the same time sufficient land to enable him to maintain the dignity of his position. Grants under this tenure were also bestowed upon persons for special services rendered, or for the future performance of certain services. The tenant cannot be ejected, except where there are conditions imposed and he fails to fulfil them ; but on the other hand he and his heirs have only the right of enjoyment and cannot alienate their title. A trifling annual fee is generally paid to the landlord to show that he has not surrendered the proprietary right.

*Karankari or Janma Kolu. (Sale of transfer in perpetuity of the right of cultivation.)*

In this case the land is made over for permanent cultivation by the tenant in return for services rendered. Where the proprietary title is vested in a pagoda, the grant will be made for future services. In some cases land is mortgaged on this tenure, the Kánam mortgagee paying the surplus rent produce to the landlord after deducting the interest of the money he has advanced. The tenant has, in North Malabar, only a life interest in the property, which at his death reverts to the landlord. In the south the land is enjoyed by the tenant and his descendants until there is a failure of heirs, when it reverts to the proprietor. Except where the land is granted for special services, an annual rent is payable under this tenure. The tenant's right is confined to that of cultivation, but it is permanent, and he cannot be ousted for arrears of rent, which must be recovered by action, unless there be a specific clause in the deed declaring the lease cancelled if the rent be allowed to fall into arrears.

*Kârâyma. (Right of perpetual enjoyment.)*

Lands made over by the trustees or managers of pagodas to those employed in performing certain offices therein are conferred on this tenure. So long as they fulfil their duties the tenants are not liable to be ousted ; to maintain an action of ejectment therefore it must be shown either that they have neglected their duties, which has rendered it necessary to employ other porsons to perform them, or that they have endeavored to set up a proprietary claim in subversion of that of the pagoda.

*Kudiyirumppâdu or Nelamuri. (Assignment of rent produce to a creditor as interest on money borrowed.)*

This is an arrangement between a landlord and his creditor, according to which the latter agrees to receive the rent produce of land leased to a tenant in lieu of interest in money upon the sum borrowed by the landlord. Should any dispute arise between the landlord and his tenant, and should the latter in consequence refuse to deliver the rent produce according to the landlord's deed of assignment, the creditor can sustain an action only against the landlord.

*Undaruti Panayam. (Mortgage with possession, the surplus produce not being paid to the landlord but carried to his credit.)*

The tenant is much in the same position as a Kánam mortgagee, having possession and recovering the interest of his money from the rent produce of the land. Instead, however, of making over the surplus produce to the landlord, he places it to his credit in account, to be applied to the reduction of the principal. As soon as the principal is in this manner repaid, the mortgagee must restore the land to the proprietor.

Kutti Kánam. (Mortgage of forests, the mortgagee felling the timber for trade and paying a fee on each stump or tree to the landlord.)

This is an arrangement by which the landlord assigns on mortgage a tract of forest land, receiving a stipulated fee for every tree felled by the mortgagee, the entire number of trees to be cut down, and the period within which they are to be felled, being expressly fixed in the Karâr entered into between the parties. The mortgagee usually makes an advance and agrees to pay the balance by instalments. The non-payment of the stipulated instalments does not render the mortgagee liable to dispossession unless there be a special clause in the agreement to this effect. The instalments may be recovered by action, but the mortgagee remains in possession during the period stipulated.

Sub-mortgage.

Mortgagees may transfer their interest to sub-mortgagees, and the latter come into the enjoyment of the same rights and privileges as the former possessed. A notice should be given to the landlord at the time of such transfer. In an action for the recovery of the property, the landlord must recognise and sue the party in possession, but is only liable to pay the amount which would have been payable to the original mortgagee.

(True Extract.)

(Signed) GEORGE ELLIS,
*Registrar.*

(True Copy.)

(Signed) T. WEIR,
*Ag. Registrar, Appellate Side.*

High Court of Judicature,
Madras, 30*th November* 1878.

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